United States Court of Appeals
for the Second Circuit

APPELLEE'S APPENDIX

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ocket No. ~~73-1725~~

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IN THE

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

—*vs.*—

LOUIS CHARLES KING, JR.,
JAMES VINCENT TALERICO,
JACK ZOGBY,
CARL J. MAZZA,

Appellants.

**On appeal from the United States District Court,
Northern District of New York**

APPENDIX OF UNITED STATES

(Vol. II — Page 559 to End).

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MR. WELCH: Your Honor, at this time pursuant to Title 13, Section 391(9) I request the court to take judicial notice of the New York General Obligations Law, Section 5-501(1) and Section 5-511(1) having to do with the commercial rates of interest and the law of New York State on usury as well as Section 4.1 of the New York General Regulations of the Banking Law setting the maximum rate of interest for the period including September 18, 1972, at 7.5% per annum.

I offer to the court photocopies of those sections.

THE COURT: I will take judicial notice of them. If you wish to prove them as a fact, I suggest you read them to the jury.

MR. WELCH: Thank you Your Honor.

THE COURT: Any objection?

MR. BRINDISI: No objection.

MR. MANGANELLI: No objection.

(Photocopies of Sections referred to above marked as Government's Exhibits 5 and 6 in evidence).

THE COURT: If you wish you may just para·

phrase the part you wish, subject to counsel's correction.

MR. WELCH: Thank you Your Honor.

As His Honor has just taken judicial notice of two sections of New York State Law, the first section states that the rate of interest for any loan account except that set by the banking board, the banking board has set a maximum rate of interest for the time in question, at this time September 18, 1972, at 7.5% per annum per year.

The other section I refer to, New York General Obligations Law states that any contract or agreement which charges an interest rate in excess of what has been set by the banking board, as designated by the other section, is void and unenforceable.

Thank you Your Honor.

At this time the United States calls Special Agent James Savage of the Federal Bureau of Investigation.

JAMES F. SAVAGE, JR.,

called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Savage how are you employed?

A I am employed with the Federal Bureau of Investigation as a special agent.

Q Were you so employed on November 18, 1972?

A Yes sir I was.

Q On November 18, 1972, at approximately 12:45 P.M., to 1:00 P.M., did you have occasion to meet with Mr. J. Schuyler Sackman?

A I did.

Q Can you tell the court and jurors where you met Mr. Sackman?

A I was located in the Nichols Shopping Plaza, in the South Utica area, and I was parked in the shopping spot.

Q When you met with Mr. Sackman what did you do?

A He came into the back seat of the car and Special Agent Watts and I were in the car at that time.

Q What was his physical appearance at that time?

A As soon as he entered the back seat of the vehicle, I noticed her was visibly shaken, extremely nervous.

Q Describe what you mean by "visibly shaken"?

A His hands were shaking as he came into the car. There was a tremor in his face. I noticed a marked redness on the side of his face.

Q Which side of his face?

A His right side of his face covering the ear area and the chinbone. I also noticed when we went into discussions two rather pronounced prick marks on the side of his neck.

Q What do you mean by "prick marks"?

A A mark that could have been---

Q Just describe what you saw.

A Two red marks I would say approximately an inch to an inch and a half above, on the left side of the neck, to the left of the adams apple and directly into the chin area.

Q Were they red marks or blood?

A They were two distinct red marks. The closest one to the adams apple had a small bubble or very small balloon of blood coming out of the prick mark closest to the adams apple.

Q Had you seen Mr. Sackman earlier that day?

A Yes I had.

Q What were you doing when you had seen Mr. Sackman earlier that day?

A I was assigned to go to the---

Q Just tell us what you were doing with Mr. Sackman? What time did you see Mr. Sackman?

A I would say between the hours of 8 and 10:00 A.M., on the morning of the 18th.

Q Was he fully clothed when you saw him?

A Initially yes. And at the time I observed him I saw him in his tee shirt.

Q Did you have occasion to see his neck?

A Yes I did.

Q Were there any prick marks as you call them at that time?

A No.

Q Was his face red on the righthand side at that time?

A No sir.

Q Getting back to the time between 12:45 and 1:00 P.M., at the Nichols Shopping Center. Did you have on occasion to take a tape recording from Mr. Sackman at that time?

A Yes I did.

Q From where did you take the tape recording?

A Took the entire tape pack from his stomach area.

Q What did you do with the tape recorder?

A I kept it in my custody.

Q From what point?

A From that point and then completing instructions I drove to Syracuse.

Q Did you ever give it to someone else?

A Yes. Two hours later I gave it to Special Agent Robert Kolevar.

MR. WELCH: I have no further questions Your Honor.

THE COURT: Cross-examine in the order in which you are named in the indictment.

MR. BRINDISI: Just one question.

CROSS-EXAMINATION

BY MR. BRINDISI:

Q Mr. Savage, now on November 18, 1972, the F.B.I. knew that Mr. Sackman was to have a meeting later on that day; is that correct?

MR. WELCH: Objection Your Honor. Mr. Savage hasn't testified to anything like that.

THE COURT: Yes. You are outside the scope of the direct.

BY MR. BRINDISI:

Q What I would like to know is whether or not there was surveillance of him throughout the day?

MR. WELCH: Objection. Mr. Savage has not testified to any surveillances.

THE COURT: You are outside the scope of the direct. Sustained.

BY MR. BRINDISI:

Q You said you saw him in a tee shirt. When did you see him in a tee shirt?

A It would be approximately between the hours of 8 and 10 A.M., that morning.

Q That morning?

A I am not sure of the exact time I saw him in the tee shirt.

Q When did you see him later on that day, the next time?

A Approximately 12:40, 12:45.

Q In the afternoon?

A Yes.

Q You see him in the tee shirt, did you see him putting on one of those electronic recording devices?

A Yes sir.

Q You said there were some marks on his neck?

A Yes.

Q Could it be from the use of any equipment on that particular area?

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

MR. BRINDISI: I have no further questions.

CROSS-EXAMINATION (continuing)

BY MR. MANGANELLI:

Q Mr. Savage, you indicated that you are a special agent of the Federal Bureau of Investigation?

A That is correct, sir.

Q Can you tell me what distinction there is between a special agent and an agent?

A Special Agent is the title that we are given by law. I believe an agent is just a shortened version of it. There is no distinction between it.

Q So a special agent doesn't add anything more to the fact that you are an agent of the F.B.I; is that correct?

A That is correct.

MR. MANGANELLI: Thank you.

CROSS-EXAMINATION (continuing)

BY MR. SCHOLL:

Q Mr. Savage during the last twenty-four hours have you had occasion to interview any witnesses to be used by the defendant Jack Zogby?

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

CROSS-EXAMINATION (continuing)

BY MR. LONGERETTA:

Q Mr. Savage I believe you testified that you assisted in putting on this electronic device on Mr. Sackman?

A No sir.

Q You were present when it was being put on?

A Yes sir.

Q After he left this place, wherever you were, with the device, were you on the receiving end of any transmission?

A No sir.

Q Where was the receiver, in what vehicle? Who had possession of that?

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

BY MR. LONGERETTA:

Q In any event the receiving end of any transmitting device was not in your presence?

A Yes sir.

THE COURT: Sustained. He has already answered it.

BY MR. LONGERETTA:

Q You said when you first observed Mr. Sackman, he had on a tee shirt?

THE COURT: Sustained.

Q You make a physical examination of Mr. Sackman?

A I don't know what you mean by a physical examination.

Q How close were you to him when you saw him with the tee shirt on?

A Initially?

Q Yes.

A Anywhere from three feet to ten feet in any given period of time.

Q Did you look for any particularly distinguishing marks as you looked and spoke to him?

A No sir.

Q Did you examine his neck, face or body in any particular manner or fashion?

A No sir.

Q Would you perhaps have observed if he had nicked his neck in shaving that morning?

A I think I would have.

Q Would you observe the little pool of blood that would have been from shaving the neck?

A No sir.

Q Did you look around his face and in his ears?

A Yes.

Q Was there any reason for doing that?

A Because I was interested in the equipment he was putting on because we were asked to look at it and make sure it was functioning.

Q The equipment was in place around his neck?

A No sir.

Q There would be no particular reason then for you to examine his neck and ear lobes?

A Some of the metering devices were close to his neck.

Q So you would have glanced at that area but took no special note of it; is that correct?

A Yes sir.

Q And the next time you saw Mr. Sackman was how long after that first meeting?

A The next time I saw him was at approximately 1:00 P.M.

Q How long was it after your first meeting?

A I don't recall the last time I saw him. I say it would have to be close to 10:00 o'clock when I saw him.

Q And it is safe to assume that three hours had elapsed?

A Possibly.

Q Do you know of his exactly whereabouts in those three hours?

A No sir.

Q You didn't keep any surveillance or protection on him yourself?

A No sir.

MR. LONGERETTA: That is all.

THE COURT: Any redirects?

MR. WELCH: No Your Honor.

THE COURT: You are excused.

(Witness excused)

MR. WELCH: The United States calls Mr. John Ryan to the stand Your Honor.

JOHN C. RYAN

called as a witness on behalf of the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Now Mr. Ryan, how are you employed?

A Special Agent with the Federal Bureau of Investigation.

Q Were you so employed as a special agent of the Federal Bureau of Investigation on November 18, 1972?

A Yes sir I was.

Q On November 18, 1972 in the course of your employment did you have occasion to see a Mr. Carl Mazza and a Mr. Louis King at approximately 12:30 or 12:45 P.M?

A Yes sir I did.

Q Tell the court and jurors where you saw Mr. King and Mr. Mazza?

A In a parking lot behind Howard Johnson's on North Genesee Street in Utica.

Q Did you know Mr. King's and Mr. Mazza's name and identity before November 18, 1972?

A Yes sir I did.

Q How far away were you when you saw them for the first time on November 18, 1972, at 12:45?

A Thirty to forty feet.

Q What did you see Mr. Mazza and Mr. King do at 12:45 on the 18th at Howard Johnson's parking lot?

MR. BRINDISI: Object to the question.

THE COURT: Sustained.

Q What did you see them do?

MR. LONGERETTA: Objection.

THE COURT: Sustained. Tell us what you saw, if anything.

THE WITNESS: I saw Carl Mazza sitting in a blue Cadillac, on the passenger side, and I saw Louis King getting in Mr. Sackman's car.

Q Did you see Mr. Mazza do anything?

A Yes. He got out of the Cadillac and walked over to Mr. Sackman's car and got in also.

Q Approximately how long did they stay in Mr. Sackman's car?

A No more than five minutes.

Q Then they got out of Mr. Sackman's car?

A Yes. Mr. Mazza got out and went back to the Cadillac, sat at the passenger's side and very shortly after, no more than a minute later, Mr. King got out and returned to the Cadillac and drove away.

THE COURT: With Mazza?

THE WITNESS: Yes sir.

BY MR. WELCH:

Q Could you see what was going in Mr. Sackman's car?

THE COURT: Were you there when they arrived in the parking lot?

THE WITNESS: No sir.

THE COURT: Were you there when either of them arrived in the parking lot?

THE WITNESS: When I observed them the car was already there.

THE COURT: The Cadillac was already there?

THE WITNESS: Yes.

THE COURT: And how many occupants were in it when you first observed it?

THE WITNESS: Just one. Mr. Mazza.

THE COURT: Where was King at that time?

THE WITNESS: Getting into Mr. Sackman's car.

BY MR. WELCH:

Q Directing your attention to yesterday, Mr. Ryan, did you have occasion to see Mr. Zogby in and around this court house?

A Yes sir.

Q Did you see Mr. Zogby in an automobile?

A Yes, sir.

Q Will you describe to the court and ladies and gentlemen of the jury that automobile that you saw him in?

MR. SCHOLL: May we have the time please?

Q Can you tell us the time and the location when you saw Mr. Zogby in the automobile?

A Yesterday, approximately 5:20 P.M., I saw Mr. Zogby getting into a 1966 Chevrolet Convertible, maroon in color with a black top, license number was DF 3876.

MR. WELCH: I have no further questions, Your Honor.

MR. BRINDISI: I thought he was going to connect something up to this last question.

THE COURT: I will leave it subject to his connection. If it is not connected, I will knock it out.

MR. WELCH: May we approach the bench, Your Honor?

THE COURT: Not at this time.

CROSS-EXAMINATION

BY MR. BRINDISI:

Q Mr. Ryan, I believe you testified that you were thirty to forty feet away from the motor vehicle in which Mr. King, Mr. Mazza and Mr. Sackman were. Did you observe anything take place in that vehicle while you had it under observation?

A No sir.

MR. BRINDISI: Thank you.

MR, MANGANELLI: No questions.

MR. LONGERETTA: No questions, Your Honor.

MR. SCHOLL: Mr. Ryan, you were present, were you not, when photographs---

MR. WELCH: Objection Your Honor.

THE COURT: Sustained. You are outside the scope of direct.

MR. SCHOLL: Nothing further.

MR. WELCH: Nothing further Your Honor.

THE COURT: You are excused.

(Witness excused)

THE COURT: Next witness.

MR. WELCH: The United States calls Mr. Robert Rea to the stand, Your Honor.

ROBERT S. REA

called as a witness in behalf of the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Rea, how are you employed?

A I am a Special Agent with the Federal Bureau of Investigation.

Q Were you so employed on November 18, 1972?

A I was.

Q On November 18, 1972, in the course of your employment as an F.B.I. Agent, at approximately 12:35 P.M., will you tell the court and jury where you were?

A I was in an automobile of the F.B.I. I was sitting in the parking lot of the Diplomat Lounge off of Genesee Street in Utica, New York.

Q Where is that in relation to the Howard Johnson Restaurant in Utica, New York?

A It is across Genesee Street and approximately a half a block away I would say.

Q From your position could you see behind the Howard Johnson Restaurant?

A I could see, yes.

Q And from your position could you see a Mr. J. Schuyler Sackman?

A I could not.

Q While in your automobile were you listening to your radio?

A Yes.

Q Can you tell the court and the ladies and gentlemen of the jury what you were receiving on that radio?

A I was receiving---

MR. LONGERETTA: Objection. No proper

foundation.

THE COURT: Overruled.

Q You may answer the question.

A I was receiving on the radio the statements that were being made by Mr. Sackman in some conversation with other individuals in an automobile.

Q Do you have any knowledge of how they were being transmitted?

A I knew that it was being transmitted by a body transmitter that Mr. Sackman had on his person.

Q Can you tell the court and jurors what it was that you heard?

A I heard some underlying comments from someone. I could not identify those comments. I heard Mr. Sackman making the statement, "I have to go to the airport to pick up someone." I do not remember who he said. At that particular time I heard a distinct whack. I heard static on the radio. Next I heard Mr. Sackman say, "Oh, my God" in a very excited tone. Then I heard something that sounded like a supressed scream, and then I heard another voice saying distinctly, "Look, you get the fuckin' money. I don't want any shit." His next statements, "I will get you. I will get your fuckin' wife. I will get your fuckin' family. I know where you live. You understand"?

Q This was your recollection Mr. Rea?

A Yes.

Q Do you do anything at that point?

A Yes. At that point I asked for instructions as to whether I should go in.

Q When you say you asked for instructions, what do you mean?

A Mr. Kolevar was in charge of the operation and I asked on another radio if I should go in and get assistance. I got no reply.

Q As a result of your request, did you go in and get assistance?

MR. LONGERETTA: If I may move that everything Mr. Rea said be stricken, as not the best evidence of what was transmitted over that receiver. The tape itself is.

THE COURT: Is there a tape?

MR. WELCH: Yes, Your Honor.

THE COURT: Sustained. Strike that out.

BY MR. WELCH:

Q And as a result of what you heard over the radio, Mr. Rea, what did you do?

A I got no instructions. I asked for instructions again. I got no instructions the second time, and I proceeded at a very high rate of speed to the Howard Johnson

Restaurant.

Q Did you ultimately get instructions?

A I got instructions by the time I reached Howard Johnson's Restaurant.

Q As a result of those instructions, what did you do?

A I turned around and went back to my position.

MR. WELCH: I have no further questions, Your Honor.

THE COURT: Any cross?

CROSS-EXAMINATION

BY MR. BRINDISI:

Q Who gave you the instructions to turn away Mr. Rea?

A Mr. Kolevar.

Q Was he able to hear what was happening in the motor vehicle, do you know?

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

MR. BRINDISI: I asked if he knows.

THE COURT: I heard your question.

BY MR. BRINDISI:

Q Did Mr. Kolevar have a radio receiver in his motor vehicle?

A He had a radio receiver. He finally received word and gave me an answer.

Q Do you know whether or not he was able to overhear th conversations in the motor vehicle as you described them?

A I have no idea. I never checked it with Mr. Kolevar.

Q From that date to the present time?

A From that date to the present time, what he could or could not hear.

MR. BRENDISI: Thank you.

MR. MANGANELLI: No question.

MR. SCHOLL: No questions.

CROSS EXAMINATION (continuing)

BY MR. LONGERETTA:

Q Mr. Rea, did you have any knowledge as to who was in that vehicle and making the sounds and noises that you heard?

A I have no absolute knowledge of who was in the vehicle at that time.

MR. LONGERETTA: I appreciate the fact that Your Honor has stricken the evidence, and I would appreciate if you would strike or instruct the jury to disregard it.

THE COURT: Disregard what he overheard of the conversations.

MR. WELCH: I have no further questions.

THE COURT: You are excused.

(Witness excused)

THE COURT: Next witness.

MR. WELCH: United States calls Mr. Robert Kolevar.

ROBERT J. KOLEVAR

called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Your name is Robert J. Kolevar?

A Yes sir, it is.

Q How are you employed?

A I am a special agent of the F.B.I.

Q Were you sc employed as a special agent of the F.B.I. on September 18, 1972 to and including December 1, 1972?

A Yes sir, I was.

Q In the course of your investigation --- excuse me. In the course of your work as an F.B.I. agent did you have occasion to receive a complaint from a Mr. J. Schuyler Sackman?

A Yes, sir, I did.

Q Did you have occasion to receive a complaint from Mr. Sackman in regard to a loan of September 18, 1972?

A Yes sir, I did.

Q When you first discussed the matter on September 18, 1972, was it a formal, specific complaint made to you?

A No sir, it was not.

MR. LONGRETTA: May I have the time and place, Your Honor?

THE COURT: Yes. Fix the time, and place.

BY MR. WELCH:

Q When was the first time Mr. Sackman discussed with you the loan of September 18, 1972, to the best of your recollection? Was it prior to September 18, 1972?

A He indicated that a loan was going to be made available to him prior to that date.

THE COURT: You mean prior to that date he indicated a loan was going to be made available?

THE WITNESS: Yes Sir.

BY MR WELCH:

Q Did you tell him -- give him any instructions as to that loan of September 18, 1972?

A Yes sir, I did.

Q What instructions did you give him?

MR. BRINDISI: Objection Your Honor.

THE COURT: Sustained.

Q What did you say to Mr. Sackman?

MR. BRINDISI: Same objection.

THE COURT: Sustained.

BY MR. WELCH:

Q You testified that you discussed with Mr. Sackman the loan of September 18, 1972; is that correct?

A There was no date given at that time.

Q At what time are you referring?

A The first time that he indicated a loan was going to be made.

MR BRINDISI: I object.

THE COURT: Sustained. How is any of this material?

MR WELCH: It is our position it is material to the issues raised by the defense in cross examination.

THE COURT: I gathered that but I still disagree. I don't see that it is material what he discussed or didn't discuss. Certainly not at this point, anyway.

BY MR. WELCH:

Q Mr. Kolevar did you conduct an investigation in regard to the September 18th transaction involving

Mr. Sackman?

A Yes sir, I did.

Q In the course of that investigation did you receive tape recordings from Mr. Sackman?

A Yes sir, I did.

Q Did you receive tape recordings from anyone else?

A Yes sir, I did.

Q From whom else?

A I received two tape recordings from special agent Savage.

Q Did you yourself make any tape recordings?

A Yes sir, I did.

Q What recordings did you make?

A I taped a conversation between Mr. Sackman and Mr. Talerico on November 11th.

Q Where did you record that conversation?

A About a block away from Gerasi's restaurant.

Q You were a block away from the restaurant. Will you tell us how you did that?

A Yes. The conversation was transmitted by a transmitter placed on the body of Mr. Sackman and I received the conversation on my car radio, and I recorded it on a tape I had in my automobile.

Q Did you hear the conversation while you were recording it?

A Yes sir, I did.

Q Have you heard the tape recording of what you recorded?

A Yes sir, I have.

Q Is it an accurate reproduction of the transmissions on the radio?

A Yes sir, it is.

Q Directing your attention to November 18, 1972, at approximately twelve forty-five p.m. can you tell the ladies and gentlemen of the jury where you were?

A Yes. I was in a panel truck which I was parking behind the Howard Johnson's restaurant in Utica, New York.

Q Which you were parking?

A Yes sir. I pulled it up and was positioning it directly behind the restaurant.

Q At that time did you have occasion to see Mr. J. Schuyler Sackman?

A I did not see him, no.

Q You have occasion to see a Mr. Carl Mazza or a Mr. Louis Charles King?

A No sir. I was in the cab of the truck itself and was not in a position to see out.

Q At that time were you receiving signals on the radio?

A Yes sir, I was.

Q When you received the signals what were those signals of?

A They were signals that we were receiving from the transmitter placed on the person of Mr. Sackman.

Q Were you receiving any signals from anyone else?

A Yes sir. I was receiving another transmission or two from the two from the surveillance car.

Q As a result of either of those signals, from other surveillance cars or from the transmitter of Mr. Sackman, did you do anything? Did you send any transmissions?

A I sent one or two transmissions. Yes sir, I did.

Q Can you tell the Court and the ladies and gentlemen of the jury what you did?

A Yes sir. After we received the conversation from the Sackman automobile, one of the agents demanded to move ---

MR BRINDISI: I object to other conversations with other agents by means of transmission. I don't see where that is relevant.

THE COURT: Sustained.

Q Can you tell us what you said?

A I directed on of the other agents ---

MR BRINDISI: Same objection, Your Honor.

THE COURT: Sustained.

MR. WELCH: Would your honor indulge me for just one moment.

BY MR. WELCH:

Q Mr Kolevar you testified that you had made tape recordings in furtherance of this investigation; did you have Mr. Sackman's consent to do that?

A Yes sir, I did.

Q In the course of your investigation have you caused transcripts of these tape recordings to be made?

A Yes sir, I have.

Q Have you seen those transcripts? Read those transcripts? Have you seen those transcripts?

A Yes, I have.

Q Have you listened to the tape recordings of those conversations?

A Yes sir, I have.

Q Are the transcripts accurate reproductions of the texts of those tape recordings?

A Yes sir, I believe they are.

Q Do they transcribe every single word that was said?

A No sir, it was impossible to transcribe every single word. There were noises, interferences occasionally during the times the recordings occurred.

Q Does the transcribe signify that words are not being transcribed because you could not ---

A Yes sir.

Q How is that signified?

A "Unintelligible" The abbreviation "UNT".

Q After comparing the reproduction of these transcripts -- withdraw that question. Now directing your attention to November 13, 1972 ---

A Yes sir.

Q Did you furnish Mr. J. Schuyler Sackman with electronic eavesdropping equipment?

A I attempted to.

Q Did he take them?

A No sir, he refused.

Q Mr. Kolevar what is the first date that you wrote a formal report on an extortionate extension of credit transaction of J. Schuyler Sackman?

MR. BRINDISI: I object to that, Your Honor.

THE COURT: Sustained.

BY MR. WELCH:

Q Mr Kolevar I direct your attention to December 1st, 1972.

A Yes sir.

Q You have occasion to -- I will direct your attention to that date at Howard Johnson's parking lot, at approximately two p.m. in the afternoon. You have occasion to see Mr. Louis King?

A Yes sir, I did.

Q Will you tell the court and the ladies and gentlemen of the jury the first time you saw him at that time?

A I saw him operating a Cadillac, a light blue Cadillac with a dark vinyl top, approaching or entering the Howard Johnson parking lot.

Q Where were you?

A I was seated in an automobile which belonged to Mr. Sackman.

Q Where was that automobile?

A It was positioned in the rear of the parking lot.

Q Facing which direction?

A Facing east.

Q And there you saw Mr. King in a Cadillac?

A Yes Sir.

Q What did you see Mr. King do?

A Mr. King entered the lot; he proceeded to the back of the lot, parked his automobile to the rear of the automobile that I was seated in -- that would be just south of the automobile I was seated in.

Q What did you then do?

A I exited the automobile as he was preparing to get out of his car and approached to the front deck of Mr. Sackman's car and told him I was with the F.B.I and told him he was under arrest.

Q At approximately that same time or very shortly thereafter you have occasion to see Mr. James Vincent Talerico?

A Yes sir, just moments later.

Q Where was that?

A I saw him approaching in an automobile. I had seen him from the ---

Q Where were you at that time?

A I was again seated in Mr. Sackman's automobile.

Q Was Mr. King still there?

A No sir, he was not.

Q You were saying Mr. Talerico appeared in an automobile. What did he do?

A He approached the Sackman automobile and the King automobile. He parked his automobile next to the King automobile, just to the south side of Mr. King's automobile.

Q Did he get out of his automobile?

A Yes sir, he did.

Q Where did he then go?

A He proceeded to the right of the Sackman automobile He then made an abrupt left hand turn and walked approximately toward the Howard Johnson restaurant.

THE COURT: Mr. Welch will you come up here please. All counsel.

(The following discussion was held at the Bench between the Court and all counsel outside the hearing of the Jury.)

THE COURT: Where are you going?

MR. WELCH: I just want to ask one more question, when Talerico was on his way to see Sackman that he saw the F.B.I. agent and turned. And while counsel are here, then I propose at that time to elicit from Mr. Kolevar that they did make recordings and then move them into evidence and then play them for the jury. It will take a few minutes to set it up.

THE COURT: Is there anything else, or is that your case?

MR. WELCH: I am pretty sure once the tapes are in evidence that is my case.

THE COURT: You can set them up during the lunch hour.

MR. WELCH: Also these tape recordings cannot be heard through a speaker.

THE COURT: Do you have earphones?

—

MR. WELCH: I have ample earphones for some spectators, the jury and the judge.

MR. MANGANELLI: With regard to the tape recordings is it proper to record our objections now or to wait until we inspect them?

THE COURT: You have already inspected them.

MR BRINDISI: That is not entirely true. We had an opportunity to hear the tapes at which time we objected to their admission because they were not accurate transcripts.

THE COURT: Wait a minute.

MR. BRINDISI: I am sorry. We objected to the transcripts.

MR. BRINDISI: Right.

MR. MANGANELLI: My objection would be as to those parts which are not material and relevant. There are a lot of conversation which is immaterial and irrelevant to what we are trying.

THE COURT: Are they in any way eliminated?

MR. WELCH: Many of them are.

MR. MANGANELLI: And I informed the United States Attorney yesterday and two days ago that we should agree of them and we should have the Court rule on them.

THE COURT: Well I will have to hear them in the absence of the jury. All right. Have you got transcripts? Maybe I can just read them.

MR. WELCH: I do have transcripts.

THE COURT: Let me have the transcripts ahead of time.

(The following proceedings were had before the jury.)

BY MR. WELCH:

Q Mr Kolevar before he went to the Bench you were describing Mr. Talerico's actions. It is my understanding lthat you testified he got out of his car, walked toward Mr. Sackman's car in which you were seated?

A That is correct.

Q Was that in the direction of the Howard Johnson restaurant?

A No sir. It was away from it.

Q And you said he proceeded to the rear of Mr. Sackman's car?

A Approximately to the rear.

Q Then what did he do?

A Attempted to look in the car, turned and briskly walked towards the restaurant.

Q Were there other parking spaces available in that parking lot?

A Yes sir.

MR. LONGERETTA: Objection, Your Honor. Immaterial.

THE COURT Overruled.

BY MR. WELCH:

Q Now Mr. Kolevar during the course of your investigation you made tape recordings?

A Yes sir.

Q Have you brought those tape recordings with you today?

A Yes sir, I have.

Q Can we see them?

A Yes sir, you may. I have them in a locked cabinet just a minute away.

Q Can you get them?

A Yes.

MR. WELCH: Your Honor may Mr. Kolevar get the tapes?

THE COURT: Can't someone else do it?

* * * * *

MR. LONGERETTA: For the record will you note that we all join in that motion.

THE COURT: All right. The jury may take their lunch hour at this time. We will resume at the usual time. Two o'clock. Don't talk about the case among yourselves or let anybody talk to you about it.

(At this point the jury was excused from the courtroom).

THE COURT: Do you have other copies of these transcripts?

MR. WELCH: Yes sir.

THE COURT: Could you give them to defense counsel.

MR. WELCH: They have copies of the transcripts.

THE COURT: Do any of you have marked what you consider objectionable? It will save me a lot of time.

MR. MANGANELLI: Yes. We have been given two copies Your Honor. This is one of the original copies. It is marked up somewhat but not substantially.

THE COURT: We better all work from the same copy or we will get all involved. Take my transcript and just indicate in red along the margin anything that you think is objectionable. Here is a red pencil.

MR. MANGANELLI: All right.

THE COURT: I suggest you all do it at the same time.

MR. SCHOLL: Your Honor, we have no objection to the transcripts.

THE COURT: You have none. All right.

Mr. Brindisi, have you seen these?

MR. BRINDISI: Yes.

THE COURT: Do you agree with his objections?

MR. BRINDISI: I will join in with his objections.

THE COURT: What about you, Mr. Longeretta?

MR. LONGERETTA: Yes.

THE COURT: Maybe we can simplify this. Do you insist that this is relevant and not prejudicial or do you insist that it isn't?

MR. WELCH: We consider it as relevant.

THE COURT: You insist that it is relevant?

MR. WELCH: Yes.

THE COURT: What is it relevant to?

MR. WELCH: Mr. Sackman has testified to the effect that he thought this money came from a Mr. Joseph Falcone, an organized crime leader and prevailed in his mind.

THE COURT: More than that, it shows nothing.

MR. WELCH: No Your Honor. May I make one other statement?

THE COURT: Yes. Suppose they ask me to strike it out, do you have any objections to striking it out?

MR. WELCH: It is not prejudicial.

THE COURT: What do you say is relevant?

MR. WELCH: Only that one remark, "How much time do you have to pay to this organization?"

THE COURT: Is that the only thing in the tape recording?

MR. WELCH: No sir. The fact that Mr. Talerico was in contact with Mr. Sackman.

MR. MANGANELLI: We have admitted that.

THE COURT: All right. The November 1972 Talerico conversation I sustain the defendants objection to page 1. I overrule your objection to page 2, page 3 and page 4, not because I see any materiality but because I don't see any harm. I don't see anything prejudicial. If you could show me anything prejudicial in it, even if it is immaterial, but I am not going to strike it unless it is prejudicial.

MR. BRINDISI: On page 2 of that transcript where it says, "JF: UNT.. old man, UNT", which is certainly taken out of context of anything that may have been said. Just two words of an entire sentence. It says, "Punks UNT..." and "They're a couple of nuts. Couple of nuts. They're UNT."

THE COURT: We are not talking about the same transcript.

MR. BRINDISI: At Geraci's.

THE COURT: November 11, 1972.

MR. BRINDISI: At Geraci's Restaurant. Page 2. The sixth line down where it says, "JF: UNT... old man, UNT." That means I suppose unintelligible. This is something taken out of context.

THE COURT: It is not out of context.

There it is. And you talk about "old man" and "how much social security he gets. I know more about him than I knew before."

MR. BRINDISI: "That was my objection to that one particular point.

THE COURT: I overrule that. Do you have another one now?

MR. WELCH: Your Honor, may we just make a note of Your Honor's ruling on one copy for a mechanical man that is going to run this machine.

Your Honor sustained the objection on the first page of November 11th?

THE COURT: Right.

MR. BRINDISI: Can we have a recess and go over these matters and then report them to the court?

THE COURT: I would like to rule on them now. I have other things to do here.

MR. BRINDISI: The only thing is some counsel prefer that some be left in and some left out.

THE COURT: I don't care. If you agree to it put your objection, or anybody that has any objection, and I will rule on it.

MR. BRINDISI: On November 11, 1972--

THE COURT: Just mark what you say is objectionable. This should all have been done months ago. Don't you guys talk to each other up here?

MR. WELCH: May I make a statement about that, Your Honor?

THE COURT: In my court this would all have been done before trial.

MR. WELCH: We had a pre-trial discovery hearing, at the end of which all defendants objected to the transcripts. We then followed a procedure to cut the transcripts and that procedure culminated on February 18th to meet the defendants' objections.

MR. MANGANELLI: I told you before we started the trial to get rid of them.

THE COURT: Never mind. That is all there was from the tape.

Mr. Welch, you should have cleaned this up before you offered them. That is your job.

(Mr. Manganelli hands transcript to the Clerk who hands it to the Court).

THE COURT: Show it to Mr. Welch. See if

he agrees with it.

MR. WELCH: No objection to the first objections on page 1 and 2 of the transcript.

THE COURT: You will delete that.

MR. WELCH: I will delete that, Your Honor.

THE COURT: Which transcript are you talking about?

MR. WELCH: The transcript of November 11, 1972, regarding a conversation between Mr. Sackman and Mr. King.

THE COURT: All right.

THE CLERK: Your Honor, could the defendant King be excused to go to the john?

THE COURT: All right.

THE CLERK: Your Honor, could all the defendants be excused from this part of the proceedings?

THE COURT: No. They should stay.

It looks like you are looking at this for the first time.

MR. WELCH: I am trying to see if anything here is prejudicial and whether it is worth the risk, and I have decided it is not.

For the record, the next six I oppose

the defendants' objection to not playing the recordings that are transcribed on pages 5---

THE COURT: All you have to say is we consent to delete the material on page 5.

MR. WELCH: We consent to delete the material on pages 5 through 8 in accordance to their objection and will continue playing on page 8.

THE COURT: What else is left for me to rule on?

Do you quarrel with all of it or what part do you quarrel with?

(At this point the defendant King returned to the court room).

THE COURT: I am going to take a short recess. You keep working. You narrow down, Mr. Welch, what I have to rule on.

MR. WELCH: Yes, Your Honor.

Your Honor, we have reached agreement. The government will not oppose any objection except to what Your Honor has ruled upon.

I have been advised by the technical people the tape recorder is essential in order to replay the tape. The tape recorder doesn't have a fast forward, so we will have to stop the tape recorder and ask the jury to take their head-phones off and play it at the regular speed.

THE COURT: You can't play the tape without taking the microphone off?

MR. WELCH: It is a special machine made only for this tape recorder.

THE COURT: Obviously it wasn't made for use in the court so we will have to put up with it. Tell your people just don't play those parts that are out.

MR. WELCH: Has Your Honor ruled on our offer to submit transcripts to the jury as a listening aid?

THE COURT: Yes. But you will have to clean them up and get all that objectionable stuff out. You better get busy photostating. Recess.

THE CLERK: Court stands in recess until 2:00 P.M.

(Whereupon at this point a recess was taken until 2:00 o'clock P.M., of the same day).

AFTERNOON SESSION

APPEARANCES: Same as morning session.

THE COURT: Let's get the jury in.

(At this point the jury was returned to the court room).

MR. WELCH: Your Honor, the United States respectfully moves the admission of Exhibits 8 through 13 into evidence.

MR. BRINDISI: Subject to the objections we made before and the rulings made by the court, no objection.

MR. MANGANELLI: No objection.

MR. SCHOLL: No objection.

MR. LONGERETTA: No objection.

THE COURT: Received.

(Governments Exhibits 8 through 13 for identification marked into evidence).

MR. WELCH: At this time, Your Honor, I have no further questions of this witness.

THE COURT: Have the transcripts been made as instructed?

MR. WELCH: The tapes are ready to be played.

THE COURT: In a redacted way?

MR. WELCH: Yes. Did Your Honor want to

proceed with the cross-examination of Mr. Kolevar?

MR. BRINDISI: Because of the time difficulties, we would have no objection to the tapes being played and the cross-examination then of this witness.

THE COURT: I think that would be the better way to proceed. Go ahead with the tapes.

MR. WELCH: Your Honor, for the record, it is my understanding I may have misstated the number of the exhibits. It is 7 through 13.

THE COURT: Yes. All right.

(Government's Exhibit 7 through 13 received in evidence).

MR. WELCH: May I request permission of Your Honor to submit transcripts of the tapes to the jury for listening aid?

THE COURT: Have they been redacted for the jury's purpose?

MR. WELCH: Yes. And they have been shown to defense counsel.

THE COURT : All right. Do you have a set for me?

MR. WELCH: Yes. May we indicate to the court that the settings are all set on the earphones in the most intelligible part and we ask that no one adjust the buttons on the mechanical equipment on the headphones.

Mr. Kolevar, would you play for the ladies and gentlemen of the jury--

THE COURT: Somebody better tell the jury how to use those things.

MR. WELCH: Ladies and gentlemen, if you will take the headphones that you find on your chair, turn them so that it looks like a "U" and place it under your chin and into your ears.

THE COURT: I notice one is labeled "L" and the other "R". Does that mean left and right?

MR. WELCH: No Your Honor. It makes no difference. May I announce to the jury which one we are playing?

THE COURT: Yes.

MR. WELCH: Exhibit 7 is the 1 A transcript. It starts, "The following conversation is a verbatim transcript of a conversation which occurred between J.

Schuyler Sackman and James Talerico in Utica, New York at Geraci's on November 11, 1972."

MR. MANGANELLI: It is my understanding that this is not the first transcript.

THE COURT: That is the first one he is playing.

Have you got them in any chronological order so we know?

MR. WELCH: We have them in the order of their exhibit number.

THE COURT: Play them in the order of the numbers that you have.

(The following is a transcript of the tape as played for the court and jurors:

"((JS: J. Schuyler Sackman))

((JT: James Talerico))

((UM: Referred to as Ed))

((First portion of the tape is unintelligible)).

JS: UNT... two guys from ah Buffalo... UNT. I don't know who they are. UNT two guys who wanted to talk to UNT ah one guy with dark hair, and, ah, he had a big nose, sort of thirty-thirty five, and the other guy was like a blondie with a round face and

and he was pale. Do you know who they are?

JT: Punks UNT...

JS: Who are they?

JT: They're a couple of nuts. Couple of nuts. They're UNT.

JS: They're Al's friends?

JT: Yeah. UNT...

JS: UNT...old man, UNT.

JT: UNT...I don't know I don't know... that's all i know. UNT.

JS: UNT, I know Al gave me UNT.

JT: I don't know who the hells got them they came from New York.

JT: What's this here Ed, UNT.

ED: That's power equipment.

JT: What is it, minus what?

ED: 7 1/2.

JT: You've got it marked 7-4 UNT.

JS: All right, do you think I oughta go over and see him this afternoon?

JT: No. No UNT, tryin to get aholda these guys and he can't reach them UNT, going right out there. I, I reach em, start back today, you and I will both go tomorrow right away. I gotta call...UNT

Transcript of Ex. 7 Sackman-Talerico at Geraci's 11-11-72.

JS: Whatta ya want, do you want me to go back to Syracuse?

JT: Hang around here. In fact, take a ride south somewheres. UNT...take a ride up there right to em. I am don't...UNT...call from a guy.

JS: O.K. O.K.

JT: UNT come back, if I get the call, jump in my car, whoosh, right off. All right? UNT.

JS: What, ah, well, I can call Lois later, I can call, I can call Lois later cuz I gotta, we're goin out tonight to, ah, going be with a couple. But I don't have to worry about that now. I mean UNT.

JT: UNT...

JS: UNT... ((Both talking at same time and background noise)).

JT: UNT the stuff UNT.

JS: O.K., in other words, we are going to Schenectady.

JT: Yeah, that's what we're supposed to do.

JS: Oh, O.K., all right, all right, all right. I'll go see Lou now.

Transcript of Ex. 7 Sackman-Talerico at Geraci's 11-11-72.

JT: UNT...just as soon as he gets ahold of garf we'll take the UNT and go right away UNT the stuff is available.

JS: O.K., all right. I'm going to Lou's now then.

JT: UNT.

JS: All right, I'll see you later. ((Pause)). Do you want him to go with us?

JT: What?

JS: Do you want him to go with us.

JT: I don't care. UNT.

JS: All right, so just leave it up to him make a decision whether he wants to go or not?

JT: Yeah UNT...

JS: O.K.

JT: Ya know.

JS: O.K., O.K., oh, oh, he, he won't go tomorrow?

JT: Naw, it be just you and me.

JS: O.K., all right, I'll see you in a little while.

JT: UNT be there today, tomorrow or Monday at the latest.

JS: O.K.

JT: UNT.

JS: O.K., all right, O.K., all right.

JT: UNT...

JS: UNT, take mine, doesn't matter.

JT: UNT.

JS: All right? It doesn't matter.

JS: Stay loose in this place, don't let him spot any cars. Don't let...)"

MR. WELCH: Ladies and gentlemen of the jury, Mr. Kolevar is going to play Exhibit 8, which is a telephone recording of a conversation between Mr. King and Mr. Sackman on November 11th. Your transcript will have November 11 at the end of the opening paragraph at the top of the page. Your Honor, while we are waiting for the tape to advance, may I take this opportunity to distribute the transcript for November 16th, which the jury didn't receive, and ask if the jury is able to hear the tapes being played to them?

THE COURT: Can you hear the tapes?

(The jury indicates "Yes").

MR. WELCH: Thank you Your Honor.

THE COURT: Go ahead.

* * * * *

even playing it back to the jury to control it and let the jury know that was the answer to the question, without letting him play the tape.

THE COURT: He has to play the tape. I think you are just too late, and it is without any significance.

MR. BRINDISI: All right.

THE COURT: You withdraw it?

MR. BRINDISI: I will.

(The following tape was played to the court and the jury as follows; this is a tape of a recording of a conversation between J. Schuyler Sackman, 217 E. Genesee Street, Syracuse, New York, and Louis Charles King, Jr., which conversation occurred on November 11, 1972:

"JS: My name is J. Schuyler Sackman. Today is November the 11th, 1972.

JS: You know that I'm still waitin for the call, and the call hasn't come in. Now I got a problem. I gotta get a thousand dollars for you tomorrow. I mean Monday. I made an agreement to get it, you know, for those two fellas. And I haven't got all of it. Now, my ace I told ya about was gonna be my father.

LK: Yeah.

JS: When my mother was in Florida last week, she bought a condominium down there and he put a six thousand dollar down payment on it. I got some money that's committed to me. You know, he calls me last night, I was out tryin to arrange the money visiting with different people. I've been chasin around like a fuckin idiot. Cuz I know the pressure is on.

LK: Yeah.

JS: And I told him, you know, he calls the house and he speaks to Lois, Lois says that he wants to see ya tomorrow morning. I had a ten o clock appointment this morning.

LK: Umm hmm.

JS: Got an ashtray?

LK: Yeah, right here.

JS: I want to kill it; so I told him that, ah, that I cannot, you know, be down this way, he says no, he says one o'clock is when we're gonna meet. I say O.K., one o'clock, we'll meet at one o'clock. I says then I can go to my ten o'clock appointment and I won't have any problem. So I went to the ten o'clock appointment and I'm gonna have some money Monday. I don't expect to have the whole thing, that's my only problem. Can you get me some more time with them? I mean I'll come in Monday with it.

LK: They want it by the eighteenth of this month. They want it all back. They told ya that. That ain't too far away you know. What is today anyways? Today's only, today's the twelfth. By the eighteenth they wanted it all back.

JS: O.K., so the eighteenth is, ah, a week from, ah, oh. no, it's Saturday.

LK: That's the eighteenth. That's what it falls on.

JS: It falls on a Saturday, the eighteenth.

LK: The eighteenth falls on a Saturday.

JS: That's right.

LK: A week from today then.

JS: Week from today. Well, the, the,

the main thing is I gotta get you some money so they see good faith.

LK: (Mumbles) I don't know what your going to do.

JS: Will they go for just vig for a while?

LK: Hmm?

JS: Will they go for just vig for a while?

LK: I don't know. I gotta talk to em. I, ah, I ain't saying any more since that night.

JS: I'm nervous about it Lou.

LK: You got a right to be, I'll tell you something your personal problems your, personal reasons, you know what I mean, wasn't like no deal didn't go thru or somethin, I mean you took care of your obligations home and all that stuff you can't part with money like that. You just can't do things like that.

JS: I'm gonna pay em.

LK: Yea, well you're gonna, but the idea is ya didn't.

JS: Right.

LK: It's a very serious, serious thing.

JS: Well, I didn't like lookin down a gun.

LK: Yeah, I know.

JS: That's the first time I ever did that. I'll be honest with ya, I was very, very uncomfortable, which is I suppose, what it was meant to do.

LK; Well, you got to do something. Whatever you got to do.

JS: All right. Where do you want me to meet you.

JS: I got shylocked, I let myself get shylocked.

LK: You got your own personal reasons, you know. I mean you took care of your own obligations, UNT. You got serious problems now.

JS: Right. But I was also supposed to be able to move wasn't I.

LK: Well UNT...

JS: Wasn't that Al's idea?

LK: UNT...told ya don't depend it. UNT. How you gonna get it back. You gonna get it from your father. Well, what did I tell you. Don't depend on any of these deals to go through because there isn't any.

JS: O.K., O.K., all right. I understand what the picture is. As soon as this thing comes off...

LK: The first thing for you to do UNT. This is serious problem. UNT...get that four thousand dollars back to him. Then you can talk to him on the, on the juice. Otherwise, you got serious problems, I mean it I don't think they'll talk to you anymore. I seriously don't. Between you and I you got very serious problems with these people you know it or not because Al told them, I told them don't worry about it. I said this guy here is going to get it from his father, if worse came to worse UNT. I think the best thing to do is pay them their money back. Then you talk to them if you want on the juice. Without bringing them the initial amount back, you making a fool out of them.

JS: All right.

LK: I don't know what else to tell ya.

Transcript of Ex. 8 Sackman-King 11-11-72.

JS: Where do you want me to meet ya Monday?

LK: Meet me down the garage.

JS: O.K.

LK: Ya know.

JS: Yeah. 11:30.

LK: UNT.

JS: All right.

LK: UNT. slightest idea, UNT.

JS: Well, I'll tell ya, I'm, I'm just tired of the whole thing.

JS: Well, I've been looking to you for guidance.

JS: Right, eleven thirty?

LK: But if I were you, I'd have that fuckin money tomorrow. Don't cause any aggravation for me.

JS: Lou, I'll lay it...

LK: I'll tell ya, you're on the fuckin juice now. You don't know what I mean not gonna play fuckin games with ya.

JS: I understand.

LK: That's too serious of a fuckin problem. You took their money, bring it back, that's all they want.

Transcript of Ex. 8 Sackman-King 11-11-72.

JS: All right, but all I m gonna be able to have is a part of the a, part of the juice, that's what I promised.

LK: You promised a thousand dollars Monday.

JS: Yeah. I don't even know if I'll have the whole thousand dollars I'm layin it on the line. I'll do the best I can to get as much as I can.

LK: Today is, today is what? Twelfth?

JS: Yeah.

LK: You got thirteenth, fourteenth, UNT, and the eighteenth is Saturday.

JS: That's right.

LK: Whatta ya gonna do by the eighteenth then?

JS: I don't know, I'm workin. What can I do, I'm gonna work on it. The six grand that I knew was gonna be available I know what they spent for the down payment on that condominium, so I'm gonna have to work on it myself. But I'll get some ju... I'll get some of the, of the juice money and then it's just gonna have to be paid, that's their business isn't it? That's their business isn't it?

LK: Yeah, I guess so.

JS: They gotta have it out to somebody, it might just as well be sittin out to me at the moment.

LK: All right, we'll see what happens tomorrow.

JS: All right.

LK: All right, I'll see ya later, Sky.

JS: Thanks for your help. I'll see ya in the morning.

LK: Yep.

JS: Well, that's UNT.

LK: Huh?

JS: Well, that's UNT. about getting this thing going UNT, no excuses UNT or something like that.

LK: All you need is, ah, UNT call him back at six.

JS: I'll call em anyway, I wanna tell Jimmy I'm gonna call later. I'll call at seven. UNT thank.

LK: UNT.")

MR. WELCH: Ladies and Gentlemen of the jury Mr. Kolavar is going to play

Exhibit Nine which is reflected in your transcript as a call on November 11 to Talerico from Sackman.

(The following tape was played for the jurors and the court).

"UF: Hello.

JS: Good morning UNT, is Jimmy there please?

UF: Yeah, UNT.

JT: Hello.

JS: Jim?

JT: Yeah.

JS: R, Low gave me a message yesterday that R, you wanted to see me this morning".

MR. MANGANELLI: May we approach the bench?

THE COURT: Yes.

(The following discussion took place at the bench between court and counsel outside the hearing of the jurors).

THE COURT: What is going on now?

MR. WELCH: The only problem I had, I didn't notice any deletions, and before we played it I wanted to reassure myself that there was nothing to be exorcised on this

MR. MANGANELLI: We did exorcise it.

THE COURT: On this?

MR. MANGANELLI: Yes.

THE COURT: Is this the one I ruled on? There is quite a bit exorcised. Take it and exorcise it. We will take a short recess. Let me know when you are ready.

THE CLERK: The jury may retire.

(Whereupon at 3:50 P.M., a short recess was taken after which the trial was resumed).

MR. WELCH: Your Honor, for the record, I have just gone over with defense counsel what the court has received and denied and we have viewed the transcripts for the 18th which have been redacted, and I would like to give them to the jury.

THE COURT: Have defense counsel looked them over?

MR. BRINDISI: Yes.

MR. MANGANELLI: Yes.

MR. LONGERETTA: Yes.

THE COURT: Are they alright?

MR. BRINDISI: Yes.

MR. MANGANELLI: Yes.

THE COURT: Anybody got any objection?

Transcript of Ex. 10 Sackman-King 11-16-72.

MR. BRINDISI: No.

MR. LONGERETTA: No.

MR. SCHOLL: No.

MR. MANGANELLI: No.

THE COURT: All right.

MR. WELCH: Ladies and gentlemen, Mr. Kolevar is going to play Exhibit #10, which on the transcripts you have is marked November 16, 1972 between Mr. King and Mr. Sackman.

(The following tape was played to the court and the jury. It is a recording made of a conversation which occurred between J. Schuyler Sackman and Louis Charles King, Jr., on November 16, 1972. The conversation took place in Whitesboro, New York:

("JS: J. Schuyler Sackman)

(LK: Louis Charles King, Jr.)

(UM: Unknown Male)

JS: I, ah, I didn't see Buddy. I spoke to him twice. He's working on something, and he thinks he's gonna be able to help me out. He's got a friend who may be able to help me. He doesn't have the cash himself, he says that, ah, he put blacktopping in on the driveway and the usual bullshit.

LK: Yeah.

JS: You know, tell you more sad stories. My only problem is this. Ah, if he doesn't come up with the whole amount, I'm gonna have part of it. I don't know exactly how much. I won't know until tomorrow exactly how much. Now, this is due Saturday. Now you said to me four thousand, they want the principle back right now.

LK: Right.

JS: What's gonna happen on, ah, on the interest.

LK: UNT. He'll talk to you about it I guess. I don't know. You owe em two. You can't take people's money and then don't pay em anything.

JS: I owe em two. I know, I agree.

LK: UNT get their money.

JS: All right, now.

LK: Pay three hundred and fifty some odd dollars he told me sure to give it back to ya, that day ya gave it to me. UNT...

they wouldn't accept it, they said you still owe them the four.

JS: They didn't accept the three hundred and fifty dollars?

LK: UNT...come to the house, I'll show it to ya. Said they don't want it. UNT... want it back. He said you hold onto it until he gives it back to ya. UNT...underneath the cigarette cases. Three one hundred dollar bills plus a fifty UNT.

JS: Oh, I gave you. Yeah, I gave you the three fifty. There's no argument, you got it home? Why wouldn't they take that as part payment?

LK: They got pissed off. UNT.

JS: UNT.

LK: UNT...under cigarette cases. Fact, if you wanna go up the house I'll show it to ya.

JS: Let me ask you this.

LK: UNT...come up with all these fuckin excuses. UNT. I told you, don't fuck around with these people, give them their fuckin money. Pay em off. Somethin's gotta be done, it ain't nothing you're gonna get away from. UNT...got all that time UNT... you don't have the time. The, they gave you as much time as they could, and ya had two months. Let's face it, I mean your personal problems are yours, it's not theirs. UNT a business deal or somethin that didn't work out then, ah, they weren't involved UNT...that's somethin different again, but what I'm trying to say is ya can't fuck around with these kinda people, you're not doing business with a bank. And like I said, you're you're very fortunate you went two months without gettin in any, any serious problems. UNT.

JS: What's gonna happen if I, if I can't pay the whole four thousand Saturday?

LK: I don't know.

JS: Can I meet with the, with their representatives again? Or with them personally? Maybe they'll give me more time.

LK: UNT...expose themselves, I mean, you know Sky, being honest with ya, the, the guy that really puts this stuff out you'll never get to see. I mean, you'll see these fuckin hoodlums they got workin for them and that's all UNT....hoodlums UNT...don't pay to get involved with these people. UNT....I borrowed five hundred myself but UNT...get a store going or something, ah, clean up my own personal problems like my taxes UNT. Rent...UNT...all these things catch up with ya. I understand this shit.

JS: ((Mumbles something unintelligible.))

LK: UNT...I know five, five hundred myself I pay the juice on it, but I know, when I tell them it's gonna be back, I, I put that fuckin UNT...two days ahead of time UNT...but everybody, ah, is in need, ah, in need of money, and, ah, people that do borrow money, ah, they have to understand that it's gotta be paid back. UNT... you just can't take money from them kinda people and fuck em around and jerk off.

JS: I'm not trying to fuck em around.

LK: I know you're not. It happens to be that it is workin that way.

JS: Yeah, I know.

LK: UNT...purposely.

JS: That's right.

LK: UNT...insure em with this, but they don't wanna hear that bullshit, cause I told them that your credit was good.

JS: Yeah, but I didn't know he was buying a condominium.

LK: Yeah, well, I didn't either. UNT...

JS: If I had known he was gonna do that, I woulda told him about it ahead of time that I need the cash, don't ya know, put that much money down. Put six grand down on a condominium.

LK: UNT...people UNT...until the last month or they'll wait for the last two, three days to go try to scrape it up. The day that you get it is the day that you gotta start working to get it back. Because it's a large sum of money, and this is what they're pissed off about. UNT...

JS: Will, will these guys be reasonable with me Saturday?

LK: I couldn't tell ya. Ya know UNT...

JS: UNT...the other day you told me he's gonna kill me for crying out loud.

LK: Well, I, I'll tell you somethin. You're in a lot of trouble, ya know, I UNT...

ain't here to scare you. I don't want to be the in, in between guy. This is UNT you personally, UNT just what they think. UNT, I didn't want to get involved in this UNT... I don't even want my name being mentioned, I mean, you, ah, you dealed with Al to begin with. I was gonna go and get it. UNT.. I was going to the same source as UNT... because I got more time, because I got a regular job and he didn't have a job.

JS: So that's why Al went for it?

LK: So, I mean Al went for it personally because he figured that ya know to get you straightened out with your personal problems. Because a lot of guys borrow money. You're not the only guy. UNT a lot of guys got problems they create themselves. UNT...

JS: Well, I UNT...

LK: UNT take that large sum of money, that was a large sum of money. UNT...sign your house over or your car like the bank does. They take a statement up, a financial statement. These funckin people gave ya this money UNT...that's all, it's as simple as that. One, two, three, A, B, C, UNT. You know, you got yourself into it, I didn't. I never begged ya ta take the fuckin money. I didn't UNT...in fact, UNT I wouldn't gave it ta ya. Because I knew UNT too fuckin hard UNT if I had money of my own I could do you somethin like three, four or five hundred. Say, look next time we get a score, we'll take it off the top. UNT... but to get yourself in this position with Al and them people, I mean, you know, what you're gettin into. You're no kid.

JS: Well no.

LK: UNT...let's suppose I said you can't get this back, I said how ya gonna do it. You said look, UNT...I said, then why don't ya go down and get it now. UNT said, now I don't want ta do that. Well, I mean, you know, ah, you created the problem. I'm not puttin all the blame on you. Because I, I couldn't see UNT... because I am not involved in this thing. It's just that I happened to be there when Al was giving the money. Well, they told me to keep the fuckin money until he comes up with it by Saturday. UNT we gave it to you all at one time, that's the way we want it back. I can take you right over to the house and show it to ya UNT...

JS: I believe that you have the money home. I believe that you have the money home, but what am I UNT...

LK: UNT...they said look when he gets that fuckin four, he says, that's how I want it back.

JS: Will they be reasonable to talk to..

LK: I don't know, UNT can't get a thousand dollars UNT, don't think they're gonna be reasonable UNT...

JS: All right.

LK: You know, I mean, what the hell, I don't mind doing business with ya. I told ya that before. I wanna do some business. I wanna make money with ya. You wanna make money with me. So far, there's nothing goin. These fuckin Lums down there, they're all a fuckin bunch of creeps. UNT...can't go, whose an UNT, all that fuckin bullshit. Whose got the stuff, who don't have it. UNT got it UNT...what the fuck's the sense of dealin with people like that. Who needs all that aggravation. I don't need that aggravation.

JS: Well, that's the way I feel now.

JS: All right, where do you want to meet Saturday morning?

LK: Well...

JS: You wanna meet here? I don't care.

LK: No, this place is closed on Saturdays.

JS: All right, you tell me where you wanna meet.

LK: UNT, the house.

JS: What?

LK: Come over my house.

JS: Come over the house.

LK: UNT...Friday night, that's the end of the place here.

JS: All right, all right, I'll come over the house Saturday then.

LK: UNT...see what you can do and then, you know, UNT you know. It's gotta be straigtened out. No sense you getting yourself all fucked up with these people. I think its uncalled for UNT...listen, your father's got string. Go down UNT... sign for it or something. UNT...

JS: I can't sign anything. I'm bankrupt. You know that.

LK: UNT

JS: If I wasn't bankrupt, I could go down and get it myself. And I screwed myself up, ah, chasing rainbows for two years.

LK: UNT...help ya out for a month or two, you're better off keepin their, ah, fuckin people like that on the line than people like this because, ah...

JS: Can we, can we make it for Monday morning, I can do a little scrounging over the weekend.

LK: I doubt it. I doubt it very, very much if they'll give you any more time. You're two months behind now. That's what happened last month, UNT on a Friday, you said well give me it over the weekend..

JS: Well, I really, I, I UNT...

LK: UNT...so far nothing has happened as far as these people are concerned, and I don't want it go to any farther. Now if you wanna take that chance, you ahead.

JS: Well, I don't want anybody comin up to the house.

LK: Well, I'll tell ya somethin UNT...

JS: Well, I don't want anybody up the house.

LK: UNT they're not gonna play games. I'll tell ya something, don't fuck around these people. You got serious problems. I'll tell ya somethin.

JS: But I don't want anybody comin up to the house now Lou. I mean, now look.

LK: Well, they'll be there...UNT...

JS: All right, well you tell them that, I am just saying.

LK: UNT.

JS: UNT (Both talking simultaneously, conversation unintelligible.) You're going to give it to me...if you going to let me go til Monday, it s on your shoulders to let me go until Monday.

LK: UNT...I can't give ya that no more.

JS: All right then, I'll be here on Saturday, that's all...

LK: UNT...leave me out of it. I could never do that anymore. I've done it before uz they listened for a while. But I could never go back and tell them ya want it over the weekend. Never.

JS: All right, I'll...

LK: UNT...gonna antagonize them more. It's nothing but a stall. You got between now and Saturday. Today's only what, Wednesday or Thursday? Do whatcha gotta do UNT...Saturday and Sunday. UNT... whatever you gotta do you get goin on doing it. UNT...get straightened out with these people.

JS: Cuz I don't want anybody comin up, I don't want anybody comin up the house. That's out.

LK: UNT...if anything should happen, don't put anything on me, cuz, ah, you won't see me. UNT...I am not gonna be the guy lookin for ya.

JS: Well, I don't want, I don't want

anybody looking for me. I want...UNT business to make money. That's why we did this to start with.

LK: UNT.

JS: All right. So I am gonna work on getting it back. I'll get them as much as I can. But I don't want any company comin up to the house. That's, that's out. Ah, I'll visit with them. I'll meet any place they wanna meet. Is that fair?

LK: UNT...that's fair. (King and Sackman speaking simultaneously--conversation unintelligible.) UNT...gotta funny feeling you are gonna end up really getting UNT. I'll tell ya the truth that one fuckin guy is gonna stab ya. I swear to god. He's gonna cut your UNT... he's gonna fuck around knife you yet. I'm not kiddin ya. UNT fuck around with money I'm telling ya somethin. You got a very serious problem. Ya don't know how it is. I've seen these things happen. I predicted them ahead of time. Ya got a problem UNT... don't know what the fuck ya gotta do, but by Jesus Christ, UNT... Jesus Christ is at stake right now. Ya better get it done. Cuz they feel they been made a fuck out of. And they're fucking powerful people, don't think they're not, they're fucking crazy son of a bitches, that's their game. And I told you, don't ever get involved with the. I told ya that day. I said don't take this money. I told ya that. I said don't take this fucking money UNT don't worry, don't worry. UNT...I done it before. I got forty thousand back one time, I got seventh UNT...I says O.K., but UNT... don't UNT...why get yourself all fucked up. Whatever ya gotta do, go do it, whatever you gotta promise these fuckin people UNT promise them sixty thousand. UNT... workin with them on something UNT...I'll make sure that you'll get your money... people like that I UNT, I can't talk to these people. I can't even extend you a fuckin day. It's out of my hands.

JS: All right.

LK: You know what I mean.

JS: All right, I'll...see you about...

LK: UNT trying to say do what ya gotta do to get this fuckin thing cleaned up. I told ya before, don't put me in the spot with those people.

JS: All right.

LK: I don't wanna get involved with all that shit.

JS: I'll see ya at 11 o'clock, how's that?

LK: Good.

JS: That a good time?

LK: UNT.

JS: Thanks for your help. I appreciate it.

LK: UNT...you understand my situation UNT.

JS: UNT...in the middle UNT...you're in the middle really.

LK: UNT me responsible. UNT.

JS: But you know I couldn't have done any work if I didn't have the money..that time. I couldn't have moved.

LK: UNT.

JS: This is no bullshit. Who's that

addressed to?

LK: UNT.

JS: What does that say. You read it. because you have

LK: UNT.

JS: I wish that Al was around boy. Make him pay for it.

LS: UNT.

JS: I could.

LK: You talked to the wrong guy.

JS: I'd make him pay for it. Wrong guy or not wrong guy, he'd get me more time. Cuz I'd show him. There's ways to make money.

LK: UNT there's ways to make money UNT. Believe me when I tell ya. Don't say I didn't tell ya cuz if anything should happen don't blame me for nothing, I'm not sicken nobody on ya in any way. I don't want anything to happen, but I'll tell you this, you're got serious problems. Whatever you gotta do you better start doin it.

JS: O.K. All right.

LK: I'll see you Saturday.")

Transcript of Ex. 11 Sackman-Talerico Tel. Call 11-30-72.

MR WELCH: The next exhibit is Exhibit Number Eleven. This is a tape recording which is transcribed and marked November 30, Talerico and Sackman.

(The following recording was played to the Court and the Jurors of a call to James Talerico by Schuyler Sackman on November 30, 1972:

"(JS: J. Schuyler Sackman)
(JT: James Talerico)
(UM: Unknown Male)

Operator: Hello

JS: Yes operator, I'd like home area code RE 2-9531, person to person to James Talerico.

Operator: James, and what was the last name again?

JS: Talerico, T-O-L-L-A-R-I-C-O.

Operator: All right, thank you.

JS: Thank you.

Operator: And your number please.

JS: 446-7847.

Operator: All right, thank you.

UM: Geraci's.

Operator: Yes, long distance calling for

Mr. James Talerico.

UM: No, he's not here.

Operator: Do you know when he's expected?

UM: Pardon me?

Operator: Well, when is he expected please?

UM: He won't be here til tomorrow, around 1 o'clock in the afternoon.

Operator: Ah, until 1 o'clock tomorrow afternoon.

UM: O.K., I'll I'll reach him, UNT...

Operator: Thank you very much.

UM: All right.

JS: All right, I'll tell ya what, try again UNT... 797-6047.

Operator: Well, is this for the same party?

JS: Yes.

Operator: 797-6047.

JS: Right.

Operator: All right, thank you. (Busy signal). I'm sorry, that's busy sir, would you like to try a little later please.

JS: I will do, thank you.

Operator: You're welcome.

Operator: Operator.

JS: Yes operator, I'd like, un, home area code 797-6047, person to person to James Talerico.

Operator: Person to person to whom?

JS: James Talerico.

Operator: What is your number?

JS: 446-7847.

JT: Hello.

Operator: Hello, Mr. James Talerico please, long distance.

JT: Speaking.

Operator: Go ahead.

JS: Jimmy.

JT: Yeah.

JS: How are you?

JT: Good, how are you?

JS: Well, I'm pretty fair, I've got a half a problem though, and I need some help. I couldn't get down because of the snow this afternoon.

JT: Oh, its a bitch out.

JS: Yeah, I figured it was down there too.

JT: Yeah.

JS: Ah, I've got an appointment as you know tomorrow at eleven thirty to meet that obligation, un, to our friend?

JT: Yeah.

JS: Across the river. Ah, I've got part of it, I've got just about a thousand dollars now. I'm going on to New York tomorrow morning. I've got an appointment in New York, ah, he knows that I was going down there on another thing that I had told him about, so ah, I defin-, I got a definite appointment. I, I haven't got enough dough to fly in, so I'm driving, but what I'd like to do.

JT: Holy Christ, you're nuts.

JS: Well, I've got to. Look I, I have no choice at this time.

JT: Yeah.

JS: I have no choice. Now I'd like ya to, ah, get a message over to, to him to meet me at 9:30 at Howard Johnson's.

JT: Can't do it tonight. I can't even move out here tonight. I can't leave the house. UNT. The roads are real real bad.

JS: Well.

JT: Real real bad. Ya know.

JS: Is there any way...

JT: Like glass out here.

JS: You can't buzz him, huh?

JT: I don't have no, no way. No way at all.

JS: Well, I have no way either.

JT: UNT. I know it.

JS: This is ridiculous.

JT: Well, if I see him, I'll tell him.

JS: Well I, what I wanted to do is meet me at 9:30 at HJ's.

JT: Well, how can I tell ya...

JS: I'll park in the back there.

JT: I know that, but what am I gonna tell ya?

JS: Can ya get to...

JT: What can I say to ya, there's no way I can go out the, the weather's bad. UNT...

JS: I look I, I know that Jimmy. I, I understand, but it puts me in a bad position too, because I don't want him to say you know that I went by and I, and I didn't stop.

JT: Huh? I can't tell ya what to do. Stop at the garage over there.

JS: I can't, it'll be 11:30 and I'll miss my appointment in New York. As it is, I'm gonna be takin a chance drivin down, but I think she'll break by the morning.

JT: Stop down early that guy opens up about 9 o'clock...his brother-in-law. See him.

JS: I'm not going to leave it with anybody else, I'll leave it...

JT: All right. Wait till you come back.

JS: If the guy, if the guy'll come over...

JT: I don't know what to tell ya. I really don't. Ya know?

JS: Bitch.

JT: The roads are real bad. I don't know what to tell ya. If ya want me see him for... I see, I'll see him tomorrow afternoon if ya want me to I'll tell him myself. That's, that's all I can do.

I ain't leaving the house.

JS; Well I don't, I don't want any problems with any of his friends comin.

JT: Ah, don't worry about it. The weather's real, real bad anyway. UNT... like glass.

JS: Because I don't want...

JT: I'll see ya in a couple days.

JS: All right, I'll tell ya what I'll do.

JT: Ya?

JS: Ah, I'll call, I'll call you tomorrow afternoon at, ah..

JT: Ah, you know where...

JS: At, at the usual place.

JT: Yeah.

JS: Why don't I call you there at let's say at, ah, at 1 o'clock and maybe we can make a place ah in the afternoon.

JT: Make it a 2. Make sure. Call me at 2.

JS: All right.

JT All right?

JS: Or shall I call him at eleven

thirty at the other place?

JT: I'd call him at 12 if I were you.

JS: Call him at 12 at the other place.

JT: Yeah, the other place at 12 you're sure to catch him.

JS: Fine, I'll call him at 12 UNT.

JT: All right

JS: Thanks for your help.

JT: Bye-bye, right.")

MR WELCH: Ladies and Gentlemen, exhibit Number Twelve is a tape recording which is transcribed, and the transcript you have is marked and is in front of you. It is from Mr. Sackman to Mr. King on December 1, 1972.

If your Honor, please, we are having mechanical difficulties at playing Exhibit number Twelve.

THE COURT: All right.

MR. WELCH: Can we go to the eighteenth?

THE COURT: See if you can to correct your mechanical difficulties between now and Monday morning. We will adjourn now until Monday morning at ten o'clock. Don't talk about the case or allow anybody to talk to you about it.

May be we can get the mechanics to work over the weekend and get these things to work. Everybody remain until the jury is out of the building.

THE CLERK: All spectators will remain in the Courtroom until instructed to leave.

(Whereupon at 4:40 P.M. o'clock an adjournment was taken to Monday, February 26, 1973 at 10:00 o'clock A.M.).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
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:
UNITED STATES OF AMERICA,
:
- against - : 72-Cr-283
:
LOUIS CHARLES KING, JAMES VINCENT
TELLERICO, JOHN ZOGBY, CARL MAZZA, :
ALBERT MARRONE, etals.
:
Defendants.
:
- - - - - - - - - - - - - - - - - - - -x

The trial in the above-entitled action was continued, pursuant to adjournment, at the United States District Court, Federal Building, Utica, New York, on Monday, February 26th, 1973, before HON. LLOYD F. MacMAHON, United States District Judge assigned to the Northern District of New York, and a Jury.

* * * * *

(The following took place in open Court in which the Jury was not present).

THE COURT: Proceed.

MR. WELCH: The Government is prepared to play the next tape, Exhibit Number Twelve for the Jury.

THE COURT: Call in the Jury.

MR. BRINDISI: Your Honor, at this time I have a motion I would like to address to the Court.

THE COURT: I will hear it in Chambers.

MR. BRINDISI: Thank you.

(The following took place in Chambers at 10:58 A.M. at which all Counsel were present).

THE COURT: If any defendants wish to be present they may.

MR. SCHOLL: Not my defendant.

THE COURT: I don't know. Maybe your client should waive it on the record. Have them also bring in the defendants.

(At this point the Marshall escorted the defendants into the Courts Chambers).

THE COURT: Let the record reflect that the defendants are here, and if you wish to remain, Mr. Brindisi is going to make some motion. I don't know whether or not Counsel plan to make motions or not.

MR. LONGERETTA: Yes sir.

THE COURT: If you wish to remain or if you don't you can waive their presence.

(It was decided that all defendants except the defendant King who was not present, remain).

MR. BRINDISI: As the Court is probably aware, over the weekend and particularly February 24, 1973 an incident occurred in which the defendant Louis Charles King, Jr. was allegedly involved. He was shot at the premises known as the Ramada Inn at Utica, New York by, I have been lead to believe, members of the F.B.I. or members of the State Police. He is presently confined at the St. Lukes Memorial Hospital. He is listed according to the hospital, Dr. Gand, in critical condition. It is my understanding an operation was performed on him. His intestines were removed. A Colostomy was done. In his right leg the arteries had been removed or severed in several instances, and that he is paralyzed on one side. I am informed that he has gained consciousness but that he will not be able to be present at the trial.

In view of that I respectfully move the court at this time for the withdrawl of a juror and a mistrial.

THE COURT: What is the prognosis?

MR. BRINDISI: I really don't know Your Honor. I assume from talking to the doctor he said he did not think he would be able---

THE COURT: Well, whem does he think he is going to be out of the hospital?

MR. BRINDISI: As I understand it might be as long as two months, but I am not really sure.

THE COURT: What is your position?

MR. WELCH: It is our position Your Honor that we should proceed in this case. The act that Mr. King was involved with was a deliberate attempt to assault a federal officer and Mr. King should be held responsible for his act. He was armed with a dangerous weapon, assault of a federal

Officer, which brought on his injuries or which prevent his appearing at the trial.

I cite United States vs. Tortoro, 464 F.(2d) at 1202. In which there is a decision in the Second Circuit that it is up to the discretion of the trial judge whether a trial should proceed considering things such as the length of the trial and the witnesses produced---

THE COURT: You don't need to elaborate on it. I hold his absence is due to his own doing and that a mistrial is not in the public interest. The court will state its reasons for its findings in more detail at a later time when I have time to do so. Suffice it to say at this time the facts are fully in the record including the statements by Mr. Brindisi as to danger to his life, and this case will be continued on trial in his absence. I think this is a voluntary waiver of his rights and we will proceed.

MR. BRINDISI: In view of Your Honor's ruling, I would like to have the jury voir dired by the court to determine whether or not they have obtained any knowledge of the incident that occurred over this weekend.

THE COURT: I deny it. The jury has been sequestered during the trial and I am assured by the Marshal that they heard no reports or any incidents over the weekend including the alleged assault by King on the special agent Kelly.

MR. BRINDISI: I say this because I understand they were able to talk to their families.

THE COURT: All telephone calls have been screened through the Marshals, and for that reason I refuse to conduct a voir dire at this time or any time. That is why I sequestered the jury and I directed that they couldn't listen to radio reports, or read newspapers or see television reports.

MR. BRINDISI: I have another request then, in view of Your Honor's ruling. I would like to have the trial conducted at St. Luke's Hospital, in the presence of the defendant, Louis Charles King.

THE COURT: That is not possible.

MR. BRINDISI: In the defense of Louis Charles King, it was my intention to call him as a witness.

THE COURT: We will take his deposition if you wish to do that.

MR. BRINDISI: I do wish to do that.

THE COURT: All right.

MR. BRINDISI: May I ask how the jury will be advised of his absence?

THE COURT: I don't intend to say anything about it. Just let it proceed in its natural course. I think that is the best way to do it. The trial will continue in his absence. Beyond that, I will give no explanation of his absence.

MR. BRINDISI: I have talked to Dr. Millett, who is his physician, and I asked him as to whether or not he would be able to testify and when, and he told me that he felt that tomorrow he would be able to testify in his own behalf.

I also asked him if it was possible to have the jury present during the time he testified. He advised me that there is an auditorium at St. Luke's Center in which there are several chairs and it would be alright tomorrow. I therefore ask that his testimony be taken in front of the jury.

THE COURT: I will reserve decision until I get an opportunity to do some research on the subject. My own inclination would be to have his deposition taken and read to the jury. It would seem to me under the circumstances the government surely would waive his testimony and perhaps you might wish to Mr. Brindisi.

MR. BRINDISI: I thought about that and discussed it with my client. He says if the trial continued he would like to testify in the presence of the jury.

THE COURT: Well, we will see what we can do about it.

MR. LONGERETTA: On behalf of Mr. Carl Mazza, I also join in the motion for a voir dire of the jury.

THE COURT: Any motion made by anyone will inmure to the benefit of all. I make the same rulings, and you have the effect of having made the motion with the same ruling.

MR. MANGANELLI: In behalf of James Talerico, I accept to Your Honor's decision as far as the same motion. I have an additional motion relative to bail, but if the Court prefers to defer it to the end of the day---

THE COURT: I would prefer to defer it to the end of the day.

MR. SCHOLL: May the record show I join in the motion in behalf of the defendant I represent.

THE COURT: Yes. Surely. Let's proceed.

(At this point the proceedings took place in open court).

THE COURT: Proceed. Bring the jury in.

THE CLERK: Bring the jury in, Mr. Marshal.

(At this point the jury was escorted into the court room where the following proceedings occurred).

THE COURT: Good morning.

THE JURORS: Good morning.

THE COURT: All right, proceed.

MR. WELCH: Ladies and gentlemen, Mr. Kolevar will play Exhibit 12 which is noted on your transcript as a conversation between J. Schuyler Sackman and Louis Charles King, Jr.

(A tape containing the following was played for the court and the jury, consisting of a conversation between J. Schuyler Sackman and Louis Charles King, Jr., on December 1, 1972:

"JS: ...Sackman, I am about to call Lou King at Whitesboro Collision, today is December first. It is 12 noon.

LK: Hello.

JS: Ah, Lou there please.

LK: Yeah.

JS: Ah, it's, ah Sky, Lou.

LK: Yeah.

JS: Ah, I got delayed going down, I just got a call from Western Union and I'm going over and the money is gonna be there in a few minutes, part of what I needed.

LK: All right.

JS: I'm gonna have a little over a thousand dollars right now and I've gotta be in New York, that deal is going through that I told ya about.

LK: O.K.

JS: And, ah, I want somebody can you meet me, say at 2 o'clock at ah Howard Johnson's, I'll be passing by at about that time on the Thruway.

LK: This afternoon?

JS: This afternoon. I wanna leave that amount of money, because I don't wany any aggravation from those gorillas.

LK: All right, O.K. UNT.

JS: All right, will you meet me at 2 there?

LK: Huh?

JS: Will ya meet me...

LK: Well, if I don't somebody else will.

JS: Yeah, but how, how am I gonna know who to give it to?

LK: Ah, Jim probably will be there.

JS: Well, I'm not gonna give it to a stranger.

LK: No, Jim I said.

JS: O.K.

LK: You know who I'm talking about?

JS: O.K.

LK: Cuz he just came down to give me.

ah, you know the message, you know, related, them that other people, you know what I'm talking about.

JS: O.K.

LK: So, he told me, ah, first chance ya get I wanna see ya anyways.

JS: All right, well, I'm gonna, when I'm in New York I don't know when I'll be back, so, ah...UNT.

LK: When ya comin back? UNT.

JS: I don't know for sure, depends on what happens down there.

LK: Oh.

JS: If, um, if, if I connect down there, I may have to go, you know, out of the country.

LK: Yeah, well let me, know, because I wannt tak to ya about something that we were talking about before. You know what I'm talkin about?

JS: Yeah, wel, I, I...

LK: UNT this way, this way before you go you can kill two birds with one stone.

JS: All right, well I, you know, I had trouble getting this cash together and I don't want any aggravation, I can't afford it, I don't want that kinda of...

LK: Well, like I said, you know, that didn't have anything to do with me, but I didn't wanna get involved anyways, you know. You know what I mean.

JS: Yeah, but I can't afford the aggravation.

LK: I know, I know that.

JS: I'm workin my ass off for everybody and I'm gettin...UNT.

LK: I know it, I know that.

JS: O.K. All right...UNT.

LK: I don't want you go blamin me for some things either you know.

JS: Well, I have....

LK: UNT individual you know.

JS: Well, I'll talk to ya when I see ya, but I...

LK: Yeah, O.K. UNT.

JS: I have to blame you , you know that. O.K.

LK: UNT...All right then listen, get a holda me as soon as ya can and I'll send somebody down there. What time you say now?

JS: 2 o'clock.

LK: O.K.

JS: All right, at that ah restaurant in the back there, well you know where I parked by the tree.

LK: O.K.

JS: O.K.

LK: All right.

JS: Bye.

LK: And then check with me when you come back, will ya?

JS: O.K.

LK: Or before ya go, I'd like to talk to ya if you are goin.

JS: All right, I'll call ya from New York.

LK: Well no, I can't talk to ya that way. Well you ain't gonna go right from there are ya?

JS: Well I, I gotta if I get, if I get what I need I will.

LK: UNT...see. UNT...

JS: Well, see if you can meet me at 2 o'clock.

LK: I can't. Oh let me try, let me try,

let me try.

JS: O.K. All right, good-bye.

LK: O.K. Bye.")

MR. WELCH: Ladies and gentlemen, Mr. Kolevar will play exhibit 13 designated at the top of your transcript as "The following is a verbatim transcript of two conversations which occurred on November 18, 1972. The first at the residence of Louis Charles King, Jr., between King and Sackman, and the second conversation between King, Sackman and Mazza."

(A tape recording of the conversations as referred to by Mr. Welch above, were played to the court and the jury as follows:

((JS: J. Schuyler Sackman))

((LK: Louis Charles King, Jr.))

((CM: Carl J. Mazza))

"JS: Today is November the 18th, the time is 10:40. My name is J. Schuyler Sackman. Hi Lou.

LK: UNT...How's it goin?

JS: All right to leave it over here?

LK: UNT...Huh?

JS: All right to leave it.

LK: UNT...Yea.

JS: I, I got good news and I got bad news.

LK: UNT...

JS: Which do you want first?

LK: I don't care.

JS: All right, I'll give you the bad news first. I didn't have the, I couldn't get the whole four thousand dollars, I'm supposed to see Buddy this afternoon, I talked to him last night, I talked to him in the afternoon yesterday. One guy that he wanted me to talk to is away for two weeks; I don't know who the guy is, but he said he's gonna reach out to a couple of other guys. He says he, he doesn't have it himself. He offered me a couple hundred dollars, which I didn't take, ah, I said it's not gonna do me any good to have just a couple hundred dollars. I really need more. I had a thousand dollars, which I was gonna give you. You told me though that they wanted the whole four.

LK: Ya.

JS: And you told me you had t ree

hundred and fifty dollars here under the dish.

LK: Right.

JS: ....figured I haven't got the four thousand dollars, ah, I need your help and I wanna make us some money. This is no bullshit. I'm gonna have the four thousand dollars, I'm gonna have six, within the next two weeks. I got a man who's gonna cosign for me. I pressed two guys, Lou, yesterday, and I lost em. Two that normally I UNT. And they said, I said I gotta have it before the banks close. And they told me to forget it Sky, you went bankrupt, who the hell are you to pressure me to make up my mind in a hour or two. One guy I saw two-thirty in the afternoon, the other guy I saw twelve, twelve-thirty is in the fish business. He usually has the cash around. He told me he's not keeping cash around. We had about six thousand UNT. I think I told you that once before, where they UNT different houses in the neighborhood. So he doesn't keep the cash around the house and he said he'll talk to me Sunday, but I started to press him hard, because I was up against the wall. This is no way for me to work. Ah, now look, they're businessmen. They wanna make money on what they got out, they want their money back. I'm gonna get it back to them. I want until December the ninth. Anything I have in between that comes in any lumps, fine....

....end up getting beat up, I don't want that. I don't wanna see those gorillas unless I don't pay on December ninth. You can release them to do anything they wanna do after December ninth.

LK: Well, UNT like I said, I have nothin to say too much, except that you had the money I'm gonna bring em the money, that's all, otherwise UNT you talked to one of their guys, which he is standing by, he wants to talk to ya. And, ah, that's all I can do, what can I do, I mean, you know, like I say...

JS: Tell him the situation, I'm goin down to see Bob Castle now. I figured I'd stop here first, I promised to be here, I'm not duckin, I'm not runnin anywhere, and I won't run. You want me to come back after I've seen Bob and meet with this guy and with you somewhere, I'll meet you at Howard Johnson's or wherever you wanna meet. Ah, You tell me now where you wanna meet and we can visit for a few minutes, but I'm not bullshit--, I don't wanna hear any stores, you know, he's gonna give me the line you know, you don't have it, I'll have it December ninth. Now look, you roughed me up once with John Longo when I needed it, when I didn't have the money to pay him that he owed to your people, is that right?

LK: Right.

JS: I don't want that happening again. O.K? I wanna have the cash here...

LK: Well like I say. I don't have too much to say about it because it's not mine. I mean I've been ordered to go in between and then not to deal with you direct but the UNT but they have got a guy here he's.... standing by this morning wants ta talk to ya. UNT... sense ah keeping him waiting, and for me just to go up there alone UNT because UNT go to you directly. So I mean you take it from there.

JS: All right. You want me to follow you up so I can leave for Bob's UNT, or should I go down to Bob's and come back and meet ya.

LK: Whatta ya think you're gonna do anything with this Bob UNT.

JS: I don't know but, I'm gonna ask him but UNT today is Saturday, I don't think he keeps four thousand dollars worth of cash laying around.

LK: Well, do you think he would do it?

JS: Bob might help me, yeah, I think he might help me. What time is it now? It's quarter after eleven. You wanna meet me for lunch at Howard Johnson's, say at, ah, twelve-fifteen? I can be down and back from Herkimer fast, now I'll know whether he's gonna do it or not. Now I got another question to ask ya. I may have to go down to meet Norman. Can I use the three hundred and fifty dollars as long as you still got it?

LK: Sure. UNT.

JS: All right.

LK: UNT...

JS: And I'll have, I'll have the whole, I'll have the whole amount back, but I, I really, I, you know I'm tapped out. Incidentally, I got an extension, I gotta make a deposit to the bank, they're not gonna close the account if I can make a deposit Monday. I need two hundred forty-four dollars. I'll use part of that three-fifty for that, and......

LK: UNT, monkey around with that stuff I am telling you, you are gonna go to jail with it.

JS: Look it. I'll stay away from him, I know what I can do myself. If you don't think I should get involved with him, I'll go, I'll stay away from him. But you know my back is to the wall.

LK: Well, you got your own self in that position. I mean, you know, you should have never taken this money, you took it for personal reasons, and, ah, you took care of your own obligations, UNT and then you didn't do anything for these people so far.

LK: All right, what's that go to do

with the money?

JS: Look, so, so they got a little interest in me.

LK: Who?

JS: Al's people. Aren't they in for the cut? Weren't they the ones who were in for the cut.

LK: I told ya. They're different people. I told ya that, he told ya that. Told ya they had nothing to do with this deal. These ain't the people that give ya the money I told ya that. These are entirely different people. We told ya it was two different UNT...

JS: I didn't know, I thought that, that was, they were, they were gettin a piece of the cut.

LK: New...No, they had nothin to do with it. The people who get UNT... are two different people.

JS: All right, you want me, you wanna meet me at Howard Johnson's for a sandwich, I'll go down to Castle's, see what I can get. And maybe you can talk to this guy and get the time for me. Look, it's to your advantage, too. I wanna make the payment. I didn't bullshit, I didn't run and I'm not scared in the sense that ah I'm runnin anywhere. I wanna make the payment. I gotta get the money together. And I can't get it if I rush people. I've got two or three people now I think I can raise the money with, but I can't rush them. If this one guy calls me back on Sunday, it's possible I may have it before then. And if I did, I'll bring it down in one lump sum. I'm gonna hold it altogether in one lump sum and bring it all down in one lump sum. If I can bring it before the ninth, you'll have it before then. But this is no bullshit this time. Just for the, for the all the times that I chased around, I think I warrant a little bit of help in this. And I'm, I'm not holding you responsible for what happened as far as the bullshit deals, I, I know if anything had come up with anything decent, you'd a been right there with me and we'd a made money. But I, just the fact that I did spend the time running, I, I deserve an extra few weeks until the ninth. And I'd appreciate you going to bat for me.

LK: UNT...don't have too much more to do with it. The best thing to do is, ah, go down and see what you can do with Bob, talk to Bob, see what you can do today with him, and, ah, I'll met ya over Howard Johnson's say at ah twelve-thirty, one o'clock?

JS: Fine, twelve-thirty.

LK: Huh?

JS: Yeah. Twelve-thirty.

LK: Is that enough time?

JS: Yeah, that's enough, how long does it take to run down to Herkimer?

LK: UNT. I don't know what he's liable to do. UNT.

JS: O.K. All right. Will you bring the three-fifty with you, too, so that ah, if they decide to give me the time then I'll be able to make it?

LK: Ya, well UNT.

JS: Jeeze.

LK: UNT tricky lamp.

JS: Jeeze that hurts.

LK: All right then ah see ya at twelve-thirty UNT.

JS: O.K. Yeah, O.K. Thank you.

(Recorder temporarily turned off).

UM: Can you hear it?

JS: It's on now. No. It's on though. You have to hit that button there Lou.

CM: How'd you make out?

JS: Well, Bob was gone, he left twenty minutes before I got there. I talked to Frank Barone who's his service manager and he says he's gonna be back around five-thirty. I've gotta pick up an uncle who's comin in from Dallas, Texas, at two-thirty out at the Syracuse Airport, but I'm, told him that I would call him at the place, at, ah, at that time. How did you make out as far as the time is concerned? Oh! (Statements unintelligible, two and three persons speaking at once). Gonna fuck him up.

CM: UNT. When you gonna come up with this fuckin money?

JS: No later than then...

CM: The first we want it by the first. We want the whole fuckin six-thousand. O.K? (Statements again unintelligible).

JS: O.K., O.K., UNT.

LK: All right leave him alone. Leave him alone.

(Statements again become unintelligible and occur almost simultaneously).

CM: UNT. Look ya tried to get it, you didn't get it your way.

JS: I'll give it to you the UNT...on my life I'll UNT... Please.

LK: UNT. Leave him alone. Come on leave him alone. Leave him alone he, he be all right.

CM: I want this fuckin money by the first you understand.

JS: Yes sir.

CM: UNT...or youre fuckin dead man.

JS: O.K.

CM: Fuckin around with you is a lotta fuckin bullshit.

JS: O.K. All right UNT.

CM: I want the money by the first.

JS: No later than the first. UNT...

CM: UNT I am telling ya, I don't want ta hear nothing else about it. I don't want no fuckin excuses or anything else.

JS: O.K.

CM: Ya hear me?

JS: Yes sir. O.K.

LK: Ah, I don't think that was necessary Carl. This guy...

CM: Look, Louie you been trying to get it trying to get UNT fuckin around, bullshitin us around and everything else. Now it no, no more time to fool around anymore.

JS: O.K. I'll have it here on the first. Who do you want me to give it to?

CM: You can give it to Louie, and I'll come wit him.

JS: O.K. O.K. I'll be here on the first.

CM: Make sure its on the first. I'm telling ya right now.

JS: Yes sir.

CM: Because I'll fuckin find ya believe me.

JS: I'm not going anywhere.

CM: All right.

JS: Not going anywhere.

LK: UNT let it, let it go at that. I mean ya know this was all UNT ya gotta do what you gotta do. UNT.

JS: I get it the first. O.K.

LK: UNT. Ya put me on the spot. UNT its out of ah my hands. There ain't nothin I can do. Everytime that I go up there there's different people involved, he keeps givin me different people to come down to see, ya, now this fuckin guy, is gonna be assigned to ya strickly, he ain't gonna move from ya.

JS: O.K.

LK: UNT. You're up UNT. You're gonna be dealing with him directly. I mean I can't do too much about it. I, I've been bendin backwards for ya. I mean, I didn't want this to happen. UNT. I mean, you gotta UNT...be doing. Get the money back to these people and let's forget about it.

JS: O.K. O.K.

LK: UNT business is done, that's somethin else. But this, I told ya I had nothin to do with. I told ya that.

JS: O.K. Thank you.

CM: Remember what I told ya.

JS: I won't forget. Lou, can I talk

for a minute.

LK: Yeah.

JS: I'll have, I'll have it here on the first.

LK: What is the matter with you? I told you jeez, don't put me on this spot. You gotta be some fuckin sorta nut. UNT... I gotta-- do to hold em back. I told ya don't do this, they're paid people let em, the fuck, we can make money. I'll go anyplace with ya, I don't care where I'm goin.

JS: Right. You got that three hundred and fifty dollars for me.

LK: No. he won't, he told me not to give it to ya. I went back I got the money, I'll give it to him, I says, ah, you know, this is the money, he said not to accept, take it back, he says don't even give em that. He said the cocksucker he's trying to use us. And that [illegible] him up more. He said he ain't even gonna get that, he says. He's got it in his pocket.

JS: O.K.

LK: Do what you gotta do UNT, you wanna go anyplace with me, I'll go anyplace with you.

JS: I haven't got any money to go now. I, I got, I, I, I threw the thousand dollars out sending this down now.

LK: O.K., see what you can do.

JS: All right, I'm going up the Nichols Shopping Center. UNT the Nichols Shopping Center.")

MR. WELCH: I have no further questions of this witness, Your Honor.

THE COURT: Do you wish the witness recalled for cross examination on the strength of any of these tapes?

MR. BRINDISI: I wish to have a moment to confer, Your Honor.

(Confeпeмce held between defense counsel.)

MR. BRINDISI: I have no questions.

MR. MANGANELLI: I have nothing.

MR. SCHOLL: I have none either.

MR. LONGRETTA: I would like to ask one question.

ROBERT J. KOLEVAR

resuming the stand, having previously been sworn, was examined and testified as follows:

CROSS EXAMINATION

BY MR. LONGRETTA:

Q Mr. Kolevar I don't recall your testimony last week so correct me if I quote you incorrectly. Did you take these tape recordings directly, yourself?

A No sir, not all of them. I only took one of the tape recordings myself. That is I only made one tape recording myself.

Q And which was that?

A That was the tape on December 11th when Mr. Sackman met Mr. Tellerico at Geracies.

MR. MANGANELLI: If Your Honor please, that was November 11th.

THE COURT: Mr. Longretta will you make your point. What are you trying to prove? We already got it in evidence.

MR. LONGRETTA: I want to know if he was in the vicinity at the time.

THE COURT: What difference does that make?

MR. LONGRETTA: The fact that no one ran to the assistance of Sackman at the time.

THE COURT: What does it have to do with the recordings?

MR. LONGRETTA: If I could establish whether he was in the vicinity.

THE COURT: It seems to me you should have established it a long time ago. But I will give you a few minutes.

BY MR. LONGRETTA:

Q Mr. Kolevar were you in the vicinity of Howard Johnsons on November 18th at two thirty that afternoon?

A Yes, I was.

Q And where were you?

A I was driving a panel truck and I was behind the restaurant.

Q Were you receiving any transmission at that time?

A Yes sir, I was.

Q And the tape that was just played of November 18th you receive the transmission of that tape, allegedly involving Carl Mazza, Mr. King and Mr. Sackman?

A Yes sir, I overheard parts of that tape.

Q Did you overhear any scuffle or anything that was transmitted on that tape?

A I overheard what was just played on the tape.

Q You do anything as soon as you heard this? Any protective action on your part ---

A There was action on my part.

Q I didn't finish the question. Did you at that time offer any assistance to Mr. Sackman?

A No sir, I didn't, at that particule time.

Q Exactly what action did you take?

A I decided to withhold trying to reach Mr. Sackman. I was afraid it would panic the people in the car with Mr. Sackman.

MR. BRINDISI: I object to that, Your Honor.

THE COURT: Again the fault lies in the question. Strike the answer.

BY MR. LONGRETTA:

Q Again I ask you, you didn't take any action concerning assisting Mr. Sackman; is that correct?

A No sir.

MR. LONGRETTA: That is all.

THE COURT: Any other cross examination? (No response.)

THE COURT: All right.

(Witness excused)

THE COURT: Proceed. Next witness.

MR. WELCH: Your Honor, at this time the government would offer into evidence -- I better have it marked.

(Certification of ownership of automobile marked as Government's Exhibit 14 for Identification.)

MR. WELCH: The United States offers into evidence what has been marked as Government's Exhibit 14 for Identification, certification of ownership of an automobile to one Jack Zogby.

THE COURT: Don't tell us what it is until it is received in evidence.

MR. SCHOLL: No objection.

THE COURT: Show it to the others.

(Government's Exhibit 14 for Identification shown to Mr. Manganelli.)

MR. MANGANELLI: No objection.

THE COURT: Show it to the other defense counsel, please.

(Government's Exhibit 14 for Identification handed to other defense counsel.)

THE COURT: Let me see it.

(Government's Exhibit 14 for Identification handed to the Court.)

THE COURT: Overruled. Received.

(Government's Exhibit 14 for Identification received into evidence.)

MR. WELCH: With Your Honor's permission may I read Government's Exhibit 14 to the Jury?

THE COURT: Not all of it.

MR. WELCH: (To the Jury) Government's Exhibit 14 is a certification from New York State certifying that one 1966 Chevrolet Convertible, maroon in color, has been owned by Mr. Jack Zogby since April 24, 1972, and this certification is dated the 27th day of February, 1973.

At this time, Your Honor, the government rests.

THE COURT: The jury may take a short recess.

MR. BRINDISI: Just one moment Your Honor. Last Friday the government was ordered to produce the records of Mr. Sackman.

THE COURT: Oh yes. What about them? Do you have those records?

MR. WELCH: Yes Your Honor. May we approach the bench?

THE COURT: Let me see them. Mark them first, Jim.

(Records marked as Government's Exhibits 15, 16, 17 and 18 for identification).

THE COURT: Will you come up. You and Mr. Brindisi.

(At this point the following discussion took place at the bench between the court and Mr. Welch and Mr. Brindisi).

THE COURT: These have no visible connection with this thing unless there is some hidden meaning here which I can't discern, but I seen no harm in showing them to Mr. Brindisi and let him decide whether they have any significance.

Other counsel should see them as well.

MR. BRINDISI: I don't see any relevency

whatever.

THE COURT: You don't see any relevency.

MR. BRINDISI: On cross-examination my understanding was we kept a daily record as to the amount of times he met with the defendants.

THE COURT: I think you overstated again. My recollection is that he had some record. Sometimes he wrote it on bits of paper and sometimes he didn't. But it will be whatever the record shows. Anyway this is all he has produced.

MR. WELCH: Yes Your Honor, they went to his office at home and the only thing he has come up with is these.

THE COURT: All right. Show them to the other lawyers.

(Government's Exhibits 15 through 18 for identification exhibited to all counsel).

MR. BRINDISI: I have no further re quests.

MR. MANGANELLI: Neither have I.

MR. LONGERETTA: I have none.

MR. SCHOLL: None, Your Honor.

MR. WELCH: Government rests.

THE COURT: All right. The jury may take

a short recess.

(At 11:50 A.M., o'clock the jury retired from the court room).

THE COURT: All right. I will not require arguments at this time. Just make your motions for the record.

MR. BRINDISI: On behalf of the defendant, Louis Charles King, Jr., I move for a judgment of acquittal as to each and every count of the indictment.

THE COURT: Denied.

MR. MANGANELLI: On behalf of the defendant James Talerico, pursuant to Rule 29A, at this time I move for a judgment of acquittal with respect to James Talerico, with reference to Count 4 and 7 of the indictment, on the grounds the evidence produced by the government as against this defendant is insufficient to establish a prima facie case.

I also state the evidence presented is also insufficient as a matter of law from which a reasonable mind can factually conclude the guilt of James Talerico and any counts by James Talerico and I therefore respectfully request an acquittal of James

Talerico.

THE COURT: Denied.

MR. SCHOLL: On behalf of John Zogby, I move for a judgment of acquittal based on the evidence.

THE COURT: Denied.

MR. LONGERETTA: On behalf of the defendant Carl Mazza, I move for judgment of acquittal on Counts 6 and 7 on the ground the government has failed to prove a prima facie case.

THE COURT: Denied. Bring in the jury.

(At this point the jury was returned to the court room).

MR. BRINDISI: John, may I have Agent Kolevar?

THE COURT: I take it this is in your defense?

MR. BRINDISI: If the court please, I would like to call Mr. Kolevar to the stand please.

ROBERT A. KOLEVAR,

called as a witness in behalf of the defendant, having previously been sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. BRINDISI:

Q Mr. Kolevar, in connection with your duties with the F.B.I., and particularly with this case, was there occasions when you made reports to your superiors regarding conversations that you had with J. Schuyler Sackman?

A Yes sir.

MR. BRINDISI: May I approach the witness, Your Honor?

THE COURT: Yes, sure.

BY MR. BRINDISI:

Q I show you Court's Exhibit 3509 and 3506, and ask you whether or not these are reports made by you in your official capacity to your superiors in Washington, D.C?

A No sir, they are not.

Q No.

A These are communication reports that I made to my superior in Albany.

Q Involving-- these relate to conversations that you had with J. Schuyler Sackman; is that correct?

THE COURT: Sustained. Get them in evidence.

MR. BRINDISI: Pardon me Your Honor?

THE COURT: You can't tell what is in

them without putting them in evidence.

MR. BRINDISI: Your Honor, I don't wish to offer the entire report.

THE COURT: Then you have a limited purpose for which you can use it.

MR. BRINDISI: All right.

BY MR. BRINDISI:

Q Were you told by Mr. Sackman on September 9, 1972, that he was to receive a loan of money in the sum of $4,000.00 from Al Marrone?

A I don't recall if that is exactly the date. If I could look at that perhaps I could---

(Mr. Brindisi hands document to witness)

THE WITNESS: Your question now is what?

BY MR. BRINDISI:

Q The specific question is whether or not you were told by Mr. Sackman on that date that he had entered into some additional negotiations with Marrone and Marrone consented to loaning him $4,000.00 prior to---

THE COURT: No, Mr. Brindisi. That is way outside the original question. Were you told by Sackman that he was going to have $4,000.00 from Al Marrone on October, whatever it is there?

MR. BRINDISI: On September 9, 1972.

A The date on here is not the date--

THE COURT: That is not what you were asked. Is that what Sackman told you?

THE WITNESS: Yes sir.

THE COURT: All right.

BY MR. BRINDISI:

Q And did Sackman also tell you that Marrone was aware of his accute need for money?

A Yes sir.

Q And that he would give him $4,000.00, which money could be repaid after the Panama deal was consummated on September 27, 1972?

A Yes sir.

Q And did Sackman, sir, advise you that he met Marrone, Tuesday afternoon, September 19, 1972, at which time Marrone had given him $4,000.00?

A He made a comment that Marrone had given him $4,000.00, but the date here is not correct.

Q Are you indicating to us that the date you have in your report to your superiors in Albany, New York, is not correct?

A Yes sir, that is in error there.

Q Well is it also an error that he met with Marrone Tuesday afternoon?

A Yes sir. This is the day you have read, but September

18, 1972 would have been a Monday.

Q I see. Did he also indicate to you at this time, and I am now talking about Sackman, that he attempted to receive the loan but was pressured into taking it because he was concerned that they would suspect that he was receiving outside assistance if he did not take the loan?

A Yes sir.

Q When was the first time that Mr. Sackman discussed this loan with you? Was that on September 18, 1972?

A No sir, it was not.

Q It was prior to September 18, 1972; is that correct?

A Are you talking about the $4,000.00 loan?

Q I am talking about the $4,000.00 loan.

A The $4,000.00 given to him on the 18th?

Q Yes.

A No sir. He simply indicated that they were going to make cash available. I didn't know when or how it was going to be made available. I told him to refuse it.

Q At least on September 7, 1972, which is 11 days before the loan was made, according to your testimony you made some indication of it to your superiors in Albany, New York; is that correct?

A Yes sir.

Q Now did Mr. Sackman say that he needed the $4,000.00 for his personal obligations prior to September 18, 1972?

A Yes sir.

Q Did you refuse on behalf of the government to give him the $4,000.00?

A Yes sir.

Q And whether or not he was an informer for the F.B.I., prior to September 18, 1972?

A Are you asking was he an informer?

Q Yes, was he an informer?

A Yes sir he was.

Q As a matter of fact he was an informer for the F.B.I., before September 9, 1972; is that correct?

A Yes sir.

Q I believe his testimony was that he commenced informing sometime in August 1972. Would that be correct or not?

A Yes sir it is.

Q Now on October 30, 1972, did the F.B.I., or yourself in any way give Mr. Sackman protection or surveillance in regard to this particular transaction?

A On October 30, sir?

Q Yes.

A No sir we did not.

Q On November 11, 1972, was a surveillance put on Mr.

Sackman by the Federal Bureau of Investigation?

A Yes sir.

Q And on October 13, 1972, was there surveillance put on Mr. Sackman by the F.B.I?

A Yes sir.

Q Is that also true for November 16, 1972?

A Yes sir.

Q And on November 18th, 1972; is that also true?

A Yes sir.

Q Now during that period of time was Mr. Sackman's residence also protected by the Federal Bureau of Investigation?

A No sir. That is outside the scope of our authority.

Q Was any surveillance made of his home prior to say November 11, 1972?

A Prior to November 11?

Q Yes.

A No sir.

Q Did Mr. Sackman advise you that his life was in danger?

A Yes sir he did, on several occasions.

Q When was the first time?

A On November 2nd, 1972.

Q And after he advised you that his life was in danger did the F.B.I., protect him in some way by surveillance of himself or members of his family?

A No sir, that is outside the scope of our authority. We would have to have local police officers arrange it.

Q Did the F.B.I. have the local police officers arrange it?

A No sir, he asked us not to.

Q But after November 2nd, 1972, Mr. Seckman advised you he had been in receipt of extortionate extension of credit?

A Yes sir.

Q Is that outside the duties of the F.B.I?

A The investigation is.

Q As of September 18, 1972, when you had been advised that he had been given an extortionate extension of credit, did you have authority to come in and investigate the case?

A Yes, but not to protect him.

Q But you have authority to advise local officers to protect Mr. Seckman?

A I didn't do that because it would have placed him in greater jeopardy.

Q It would have placed him in greater jeopardy?

A Yes sir.

Q It was after November 2nd, 1972, that he advised you that his life was in danger; is that correct?

A No sir, that is the first time he told me he had been threatened.

Q That is the first time he told you he had been threatened. Between September 18, 1972 and November 2nd, 1972, had he made any indication to you in any way that his life had been threatened?

A There was no indication that he had been threatened until September 30th.

Q September 30th? Or October 30th?

A I am sorry October 30th.

Q So between September 18, 1972 and October 30th, there was no indication made by him that his life was in danger?

A Yes. He said he was constantly concerned.

Q When was the first time that he told you that?

A That his life was in danger?

Q Yes sir.

A I don't recall the specific date. I met him about six or seven times a week. I knew there was real fear in his mind but I don't remember the exact date or his exact comments.

Q Are you indicating to me that after September 30, 1972, you met with Mr. Sackman six or seven times a week?

A Prior to that time.

Q How about after that time, how many times a week did you meet with him?

A I don't recall.

Q Was it six or seven times a week also?

A Not exactly, but it was frequent.

Q Can you give us an approximation of how many times you met with Mr. Sackman after September 18, 1972?

A It varies from week to week. Two or three times; maybe once; maybe four or five times.

Q On those occasions when you met with Mr. Sackman after September 18, 1972, he tell you he had borrowed $4,000.00; is that true?

A Yes sir.

Q Did he also tell you at that time that he had to pay a rate of interest of $1,000.00 a month?

A Yes sir.

Q When did he first make that indication to you that he would have to pay $1,000.00 a month interest on this loan?

A On November 2nd.

Q That is the first time?

A Yes sir.

Q At that time he was also informing for the F.B.I., on other matters not connected with this case; is that true?

A Yes sir.

Q I believe you also testified after November 2nd, 1972, there was no type of surveillance made by the F.B.I., or any other law enforcement agency which was directed to protect the life of Mr. Sackman; is that true?

A In addition to the dates that you have already asked me about?

Q In addition to the dates I have already asked you about.

A That is correct.

Q On all those dates there was no attempt at any time to protect the life of Mr. Sackman or his family; is that your testimony?

A Yes sir.

MR. BRINDISI: I have no further questions.

MR. MANGANELLI: I have no cross.

MR. LONGERETTA: No cross.

CROSS-EXAMINATION

BY MR. SCHOLL:

Q Mr. Kolevar have you ever seen the defendant Jack Zogby in the presence of J. Schuyler Sackman?

A No sir I have not.

MR. SCHOLL: That is all.

THE COURT: You are excused.

(Witness excused)

MR. BRINDISI: Your Honor, as I indicated to the court, my next witness is Louis Charles King. He is in the hospital. I would like to have the jury take his testimony.

THE COURT: We will take it in the proper course. We will proceed.

MR. BRINDISI: Other than Mr. King's testimony, Your Honor, I have no further witness.

THE COURT: All right. Next defendant.

MR. MANGANELLI: May I proceed with the defense of James Talerico?

THE COURT: Yes. Sure.

MR. MANGANELLI: I would like to call the defendant James Talerico to the stand.

JAMES VINCENT TALERICO,

a defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MANGANELLI:

Q Witness, will you state your full name?

A James Vincent Talerico.

Q How old are you?

A Fifty-one.

Q Where do you reside?

A 702 Rutgers Street, Utica, New York.

Q For how long a period of time have you lived there?

A Two years.

Q And before that where did you live?

A Yorkville, New York.

Q Are you married?

A Yes I am.

Q Do you have any children?

A I have three children.

Q And are any of those children living at home?

A Two are married and one is in the service.

Q Is that a boy that is in the service?

A That is a boy that is in the service.

Q When he is not in the service, does he live at home?

A He lives at home.

Q Mr. Talerico, are you presently employed?

A No I am not.

Q Tell the jury and the court what your former occupation was?

A I ran a grocery store.

Q What was the name of your grocery store?

A Yorkville Market.

Q Can you tell us where that was located?

A Oriskany Boulevard, New York Mills.

Q For how long a period of time did you operate that grocery store?

A I operated it three years myself.

Q Excuse me. I mean operated, when you were the owner of the store?

A Three years myself.

Q And when did you terminate that business?

A In October of '71.

Q And before being owner what did you do?

A I worked there for my brother.

Q Was your brother the owner?

A My brother was the owner.

Q Approximately how long did you work in that capacity?

A About ten or fifteen years.

Q And before that, sir, what did you do?

A I was a waiter.

Q Now Mr. Talerico are you aware that you were indicted by an indictment here in Court 4 which charges you with willfully and knowingly participating along with the defendant Louis Charles King, on the 13th day of November, 1972, in the use of extortionate means of collecting an extension of credit from one J. Schuyler Seckman? Are you aware that you are charged in that count with having committed that crime?

A Yes sir I am.

Q Will you tell the jury whether or not you are guilty of that crime?

A No I am not.

Q In that same indictment, Mr. Talerico, in Court 7, you are charged with, from the 18th day of September, 1972 up until including the 1st day of December, 1972-- excuse me, the first day was the 18th of September until December 1, 1972, you are charged with willfully and knowingly conspiring with, confederating with, combining with and agreeing with each of the other defendants present in this court room and named in this indictment and with also Albert Marrone, John Doe, Carl Mazza, Jack Zogby and Louis King, with conspiring with all those gentlemen for the purpose of using extortionate means to collect an extension of credit from J. Schuyler Sackman. Are you aware that you are being charged with that crime?

A Yes I am.

Q I ask you again, Mr. Talerico, are you guilty of that crime?

A No sir I am not.

Q Mr. Talerico, do you know J. Schuyler Sackman?

A Yes sir I do.

Q Will you tell the court and jury for how long a period of time you have known him?

A I have known Sky for four, five or six years.

Q And during that period of time would you say that you were friendly with him?

A Yes sir.

Q Did you consider yourselves friends?

A Yes I do.

Q Did he have occasion to visit you at your home?

A Yes, he stopped at my home.

Q Was your wife present on any of those occasions?

A She was.

Q And did you have occasion to speak with him personally and on the telephone?

A Yes, often.

Q Did you call him at times?

A I have called him, yes I have.

Q And did he call you?

A Oh, yes.

Q Would you say that this was on a fairly regular basis over the period of four years?

A Yes, I would say so.

Q Were you aware that Mr. Sackman was a mortgage broker?

A Yes I was.

Q You heard him testify when he was in this court room?

A Yes I did.

Q You ever have occasion to refer any potential clients to Mr. Sackman with respect to his mortgage broker's business?

A I did recently, yes I did.

Q Do you recall the name of any individuals that you did refer?

A I referred Tommy Graziano to him from Kansas City.

Q Do you know for what purpose you referred him?

A He wanted to build a motel and was looking for money, and Mr. Sackman was in that position.

Q Do you know what if anything occurred as a result of your referral?

A No I don't.

Q And did you refer him because you were a friend of his?

A Yes I did.

Q Do you know the defendant Louis Charles King?

A Yes I do.

Q And approximately how long have you known him?

A Upwards of eight years.

Q Would you say that you are acquainted with him or friends with him or friendly?

A I would say so, yes.

Q You ever have occasion prior to September 18, 1972, to speak with Mr. King in the presence of Mr. Sackman?

A Yes I did.

Q Did you ever have any matters or dealings with Mr. King that involved Mr. Sackman prior to September 18, 1972?

A Yes we did.

Q Now Mr. Talerico prior to September 18, 1972, which was the date that the loan in question here was made to Mr. Sackman, did you ever meet with Mr. Sackman and a Mr. Marrone and a Mr. King relative to the loan on September 18th, 1972?

A No sir I have not.

Q On any occasion or occasions prior to September 18, 1972, did you ever talk with Mr. Sackman either in the presence or without the presence of Mr. Marrone and/or Mr. King about any arrangements were made concerning this loan of September 18, 1972?

A No sir.

Q Did you know on September 18, or prior thereto that a loan was to be made to Mr. Sackman by Mr. Marrone and/or Mr. King?

A No sir.

Q Were you present at an alleged meeting at the Ramada Inn with a Mr. King and a Mr. Marrone when Mr. Sackman was alleged to have been given some money in an envelope?

A No sir.

Q Did you know anything about that meeting?

A No sir.

Q Now following the 18th of September, 1972, Mr. Talerico, I ask you again did you have occasion to speak with and see Mr. Sackman?

A Yes I did.

Q And on these occasions when you met and spoke with him, did they involve any matters relating to this loan?

A No sir.

Q Did they involve matters outside of this loan?

A Yes sir.

Q Did any of those matters have anything to do with this particular loan?

A No sir.

Q Now Mr. Talerico, did there come a time when you learned about a loan, regardless of what the type of loan was, that was made to Mr. Sackman?

A Yes sir there was.

Q Will you tell the court and jury when it was, to the best of your recollection, that you learned about the loan?

A It was in the month of November, in the early part of November. It was between the 4th and the 6th of November, is when I first learned of this loan.

Q Tell the jury the circumstances under which you learned of the loan?

A Sky and I were riding in the car, he seemed desperate and I asked, "Sky, what is wrong with you?"; and he told me that he owed $4 or $5,000.00 to an Al Marrone that he had borrowed it from and wanted to know what kind of a man he was.

Q Did Mr. Sackman ask you this?

A He did.

Q Did you reply to him?

A I told him he had no business borrowing it from him.

Q What did you reply regarding the type of man Mr. Marrone was, if you did?

A I told him he was a tough boy.

Q Mr. Sackman say anything to you, sir, after that?

A He mentioned something about two fellows, he described to me and he asked me if I knew them, and I said, when he gave me the description, they didn't make sens to me. I said I didn't know who they were.

Q Where were you when this conversation occurred that you just related?

A In an automobile.

Q Whose car was it?

A I am pretty sure I was in Sky's car.

Q Were you riding with him to someplace?

A Yes.

Q On this trip when you were with him, were you on the trip for purposes of anything to do with the loan that he told you about?

A No sir.

Q At the time he told you about this loan, Mr. Talerico, he give you any additional information concerning the details of the loan at that time?

A Well he said he owed this money and he could pay it back so when he told me he could pay it back, I said, "Well, pay it back."

Q Did you continue your trip with him?

A I continued my trip with him.

Q And was there any additional mention about this loan?

A No sir.

Q Did you make any additional inquiry?

A No sir.

Q He suggest or offer any additional information to you?

A No sir.

Q Now you said that this occurred between the 4th and 6th of November?

A Yes sir.

Q 1972?

A Yes sir.

Q Almost two months short of a couple of weeks from September 18; is that right?

A Must be.

Q You indicated in your testimony that he told you about two men. Did he tell you what those two men did to him or said to him?

A No. He described the two men to me and I asked him what was the description about, and he said. "They paid me a visit."

Q Did he tell you what occurred in that visit?

A No he didn't.

Q Did you see any marks or any bruises on him when he told you this story?

A No sir.

Q Did you make any further inquiries?

A No sir.

Q Now Mr. Talerico, you say these visits were on the 4th or the 6th of November; is that correct?

A Yes sir.

Q Did there come a time thereafter when you had occasion to speak with Mr. Sackman over the telephone?

A Yes sir I did.

Q I call your attention to November 11, 1972, and ask you whether or not on that date you received a telephone call from Mr. Sackman at approximately 9 or 9:30 in the morning?

A Yes sir I did.

Q Before that morning Mr. Talerico, did you attempt to place a call to him?

A Yes sir.

Q Tell the court and jury when it occurred and approximately what time?

A I would say a Friday.

Q Was that the day before the 11th?

A On the 10th. It would be the 10th, on Friday about 6 o'clock I called Sky's house.

Q Who answered the telephone?

A Either his son or his wife answered the phone.

Q Do you know the name of his wife?

A Yes.

Q Will you tell us her name?

A Her name was Lynn.

Q You have occasion to speak with Lynn?

A Yes I had.

Q What did you tell Mrs. Sackman?

A I asked where Sky was.

Q What did she say to you?

A She said he was not home and was expected back later.

Q What else did you tell her?

A I told her to have him meet me at Geraci's the following day at 1 o'clock.

Q What is Geraci's?

A A restaurant in South Utica.

Q Do you frequent this place?

A Yes.

Q Prior to the 10th of November, you frequented it?

A Yes I did.

Q Did you consider yourself a steady customer?

A Yes I did.

Q Was Mr. Sackman over there before?

A Yes he has.

Q In your presence?

A Yes.

Q Let's get back to the telephone conversation. You indicated that you told his wife to have him meet you at Geraci's?

A That's right.

Q What time did you tell his wife to have Sky meet you?

A At 1 o'clock.

Q Are you certain about the time?

A Yes I am.

Q Did you have any additional discussion with Mrs. Sackman at that time?

A No I didn't.

Q Then you said that you received a call on the following day, which was the 11th; is that right?

A Yes.

Q What time of day did you receive that call?

A It was early in the morning. It was about 8:30, 9:00 o'clock.

Q Mr. Talerico, is that the telephone conversation that the jury has heard and we have referred to in this

A Yes it is.

Q When he called you that morning, Mr. Talerico, do you recall basically what the subject matter of the conversation was?

A He called me that morning and told me his wife said I wanted to reach him. I told him I didn't want to reach him, just to come down at 1 o'clock.

Q Did you indicate to him that this was a pre-arranged appointment?

A Yes it was.

Q Can you tell us whether or not the purpose of that meeting that was to take place at 1:00 o'clock, as far as you were concerned, had anything to do with the loan of September 18, 1972?

A That was the furtherest thing from my mind.

Q But did it involve you and Mr. King?

A Yes it did.

Q Did it involve anything connected with this case at all?

A No sir.

Q You recall on the telephone, Mr. Talerico, Mr. Sackman making the statement to you, "You know I got that other obligation to meet on Monday. I have not got the money yet."; do you recall him making that statement?

A He said something to that effect.

Q When he made that statement, did you know beforehand that he had this obligation to meet on Monday?

A Just what he had told me.

Q Did you know, prior to him making that statement, concerning any obligation that Mr. Sackman had to meet on the 13th of November?

A Just what Sky told me.

Q And you referred to it in that conversation?

A What he told me on the 4th, 5th or 6th of November.

Q I am asking you specifically, Mr. Talerico, whether or not you knew that Mr. Sackman had to meet an obligation with Mr. King or someone else on the 13th? Did you know he had to meet that on the 13th?

A No sir. No sir.

Q Now basically is that the substance of any conversation over the telephone that you had with him concerning the loan?

A Just what he asked me on the phone.

Q Also on that same date, Mr. Talerico, isn't it true that Mr. Sackman did meet you at Geraci's Restaurant?

A Yes he did.

Q At approximately what time would you say that he met you?

A It was a little after 1:00.

Q When he met you did you carry on a conversation with him? Did you talk with him?

A Yes I did. I talked with him all of that day.

Q I ask you whether or not the major portion of your conversation, again with Mr. Sackman, on the 11th, which was a Saturday, at 1:00 o'clock, had anything to do with this loan in any fashion?

A No sir.

Q It did not?

A No sir.

Q Now during that conversation, and I am referring to the afternoon of September 11th--- excuse me, November 11th, did Mr. Sackman give you any more definite description, did he describe in more detail these two men he had previously told you he had visited him?

A Yes he did.

Q Do you recall what description he gave?

A He said one was a dark haired fellow with a big nose, 5 foot 8 or 10, something like that, 30 to 35 years old. And another one was a tall blonde long-hair, between 30 and 35, in that vicinity.

Q Did he ask you if you knew who they were?

A I told him they were a couple of punks.

Q In that conversation he also ask you the question, "Are they Lou's friends?"

A I told him I didn't know.

Q In response did you also use the word, "Yeah"?

A Probably did.

Q Mr. Talerico, I call your attention to that incident and ask you whether or not at that time or at this time you had any knowledge concerning the identity of those two men?

A No sir.

Q And then you continued to talk with Mr. Sackman?

A Yes.

Q And I ask you again, did your conversation have anything to do with this loan or any of its ramifications? Do you understand my question? After that remark, did your continued conversation have anything to do with this loan?

A No sir.

Q Now Mr. Talerico, it is a fact that you had an opportunity to go over the transcripts of the conversation with him; is that true?

A Yes sir.

Q And you have gone over them and you have reflected upon them, have you not?

A Yes sir I have.

Q Now let's go the 13th Mr. Talerico, from the 11th, from the time that you said-- excuse me, I am ahead of myself. There came a time when Mr. Sackman left Geraci's on that Saturday after you had that conversation?

A Yes he did.

Q Do you know where he was going?

A To Mr. King's office.

Q Do you know whether or not that was all arranged by you?

A Yes it was.

Q As a matter of fact you told him to?

A I told him to.

Q And then did he come back?

A Yes he did.

Q And did you continue to talk with him?

A Yes sir.

Q Did you talk with him regarding what he had said to Mr. King and vice versa on that Saturday?

A When he came back, I asked him what happened and he said, "I reached that fellow in Schenectady---".

Q Just a minute. What I am asking is whether or not he told you the subject matter of his talk with Mr. King, without revealing the subject matter. Did he tell you what he talked about with Mr. King?

A No sir.

Q Did he talk to you at this time concerning anything for which you are on trial here?

A No sir.

Q Between Saturday the 11th, and Monday the 13th, did you talk to or see Mr. Sackman, before the 13th?

A No sir.

Q Now on the 13th, at or about 11:30 A.M., where were you?

A In the Whitesboro Garage.

Q Where is that?

A In Whitesboro, New York.

Q Do you know who owns it?

A James Ferris.

Q Do you know what relationship James Ferris has or may have to the defendant Louis King?

A He is his brother-in-law.

Q Did you know of this relationship before November 13th?

A Yes I did.

Q How long a period of time did you know they were related?

A Quite a few years.

Q You ever have occasion before the 13th to go to the Whitesboro Machine Shop?

A Yes I did.

Q When was the last time you were there immediately before the 13th? Do you understand what I am asking you? You told me you were there on the 13th?

A Yes I was.

Q Tell us what was the most recent previous time that you were there?

A Maybe a week or two before.

Q Were you there for any particular reason?

A My car was smashed and I went down for an estimate and he ordered some parts for it.

Q And this was approximately a week or so before?

A A week or two.

Q So that you were acquainted with this place?

A Yes, I was there quite often.

Q When you were there on the 13th, was Mr. King there?

A Yes he was.

Q Did you see him?

A Yes I did.

Q Where did you see him?

A In the office of the Whitesboro Collision.

Q Did you talk with him?

A Yes I did.

Q Did your conversation at that time have anything to do with Mr. Sackman?

A No sir.

Q Did there come a time when Mr. Sackman arrived on the scene?

A Yes he did.

Q And what time would you say that Mr. Sackman came?

A Ten minutes later probably.

Q Can you describe to the court and jury what happened when Mr. Sackman came into the Whitesboro Body or Collision Shop?

A Walked into the body shop and walked right to Mr. King and gave him $350.00. He said, "Here, give this to Al Marrone or Al Marrone's wife." And King told him to give it to him himself. He said he didn't know Al's wife and King wound up taking the money.

Q Was any money ever given to you?

A No sir.

Q Did Mr. Sackman on that occasion offer any money to you?

A No sir.

Q Now Mr. Talerico, do you recall Mr. Sackman testifying on the stand about a prior occasion that you talked about with him? You recall his testimony?

A Yes I do.

Q Do you recall him saying in words or substance that, on that day, you told him, following the giving of this money to Mr. King, that you had once borrowed $500.00 and that they had put a gun to your head and that you paid it?

A No sir.

Q Do you recall making that statement to him?

A No sir.

Q Did you ever make that statement?

A No sir.

Q You recall whether or not Mr. King told him he had borrowed $500.00, and he had to pay it back?

A Just what I read in the transcript.

Q What else occurred, if anything, between you and Mr. Sackman and Mr. King, in the presence of Mr. Sackman on the 13th of November 1972, other than what you told us?

A Me? I didn't say anything. I just stood there.

Q There came a time when Mr. Sackman mentioned anything to you before he left the office? Think carefully. He said something like, "I am in a hurry. I have to leave. I will try and locate some of them tonight." Did you on the 13th of November make any threats to the life, person or reputation or property of Mr. Sackman?

A No sir.

Q Did you make any threats referred to as implicit threats or to indicate to him he better make the payments or something might happen?

A No sir.

Q Did you know the purpose for which the $350.00 was being paid on that day?

A On the principal of $4,000.00. That was my--- that is what I heard.

Q Did you talk with Mr. King after Mr. Sackman left?

A Yes I did.

Q What did you talk with Mr. King about?

A I talked with Mr. King, and said, "What was that all about?"

Q What did he tell you?

A He told me to mind my business.

Q And did you?

A Yes sir I did.

Q Did Mr. King deliver any of that money over to you?

A No sir.

Q Did you ever receive any money from Mr. Sackman up to that time pertaining to this loan?

A No sir.

Q How long did you remain there?

A Fifteen, twenty minutes.

Q And then you left?

A I left.

Q Now Mr. Talerico, that was the 13th of November, was it not?

A Yes sir.

Q I am going to ask you whether or not from the 13th of November until the 30th of November, 1972, seventeen days later, did you during that interval time speak with or meet with Mr. Sackman?

A No sir.

Q I call your attention to the 30th of November 1972, and ask you whether or not on that day you had occasion to speak with Mr. Sackman, on the 30th day of November?

A Yes sir I did.

Q Do you recall the day of the week that the 30th of November was?

A It was a Thursday.

Q All right. Do you recall what time of day it was when Mr. Sackman called you?

A It was 9:00, or a little after 9.

Q Was it in the evening?

A It was in the evening.

Q Will you tell the court and jury what type of evening that was? I am referring to the weather.

A The weather was real bad.

Q Was it snowing?

A It was sleeting.

Q Tell us what happened about 9:00 or 9:30 on the 30th of November?

A I was sitting down. The telephone rang. Person to person for a James Talerico. Sky said, "Hello Jim." I said, "Hello." He asked me if I would deliver a message to Louis King. I said I wouldn't leave the house, the weather was real bad.

Q He tell you at that time what the purpose of the message was?

A He said he had $1,000.00 to give Mr. King and he had no way of getting it to him because the weather was bad from where he was. I told him, "It is worse here." He mentioned something about going to New York, he had to drive. I told him it was crazy. The weather was real bad and he asked me whether I could deliver a message. I told him I was not going to leave the house for him or anybody. The weather was real bad. The roads were bad, and I was not going to leave the house and he cried to me that he had to get in touch with King and would I get ahold of him. I said I would try to get a message to him, to King, on the next afternoon.

Q The next afternoon or next morning?

A Next afternoon. I went to the Whitesboro Body Collision and I saw King. It was maybe a quarter to twelve, something like that, and I told him that Sky Sackman was to call him at twelve o'clock pertaining to something, "That is your business. I don't want to know about it." That is what I told him.

Q What did Mr. King then tell you? Did he ask to meet you after that?

A Yes he did.

Q Tell us what he said?

A He said to me, "Where are you going?" I said, "I got to go someplace." He said, "Will you meet me at Howard Johnson's around 2 or a little after 2:00?" I said, "Sure."

Q Did you know that Mr. King and Mr. Sackman had matters other than the subject of this trial here, at that time?

A Yes I did.

Q Did you think there was anything unusual about Mr. King asking you to meet him at Howard Johnson's at 2:00 o'clock or thereafter?

A No sir.

Q And that occurred approximately quarter of twelve that morning, which would have been the 1st of December; is that right?

A Yes.

Q And then later on that day did you go to Howard Johnson's?

A Yes I did.

Q And when you pulled in the parking lot or driveway, or wherever you parked in there, when you parked, did you recognize Mr. King's car?

A Yes I did.

Q Did there come a time when you recognized Mr. Sackman's car?

A Yes I did.

Q When you saw those two cars, what did you do? Were you in your car when you first saw them?

A Yes I was.

Q What did you do?

A I parked my car on the side of Mr. King's car, got out of my car, proceeded up the ramp to Howard Johnson's.

Q Did you ever enter Howard Johnson's before something occurred?

A No sir, I never did.

Q What occurred?

A A federal man arrested me.

Q You were placed under arrest; is that right?

A Yes I was.

Q Now, Mr. Talerico, you know the defendant Jack Zogby?

A Yes, I know Jack.

Q Could you characterize your association or knowledge with him-- strike that. Would you consider Jack Zogby a friend?

A Yes, an acquaintance.

Q You ever socialize with Mr. Zogby?

A No.

Q Have you ever been to his home?

A No.

Q Has he ever been to your home?

A No.

Q Have you seen each other on the street?

A I have seen him on the street, yes.

Q Did you have any business dealings, regardless of what they were, from the 18th of September or even before the 18th of September, 1972, until the present time, with Mr. Zogby?

A No sir.

Q Did you ever talk with Mr. Zogby about anything that you are testifying to here today?

A No sir.

Q Did Mr. Zogby ever talk to you about anything?

A No sir.

Q You ever combine with, confederate with, conspire with Mr. Zogby to collect any loan regardless of the place?

A No sir.

Q Look at the defendant, Mr. Mazza. Did you know the defendant Mr. Mazza?

A Yes I did.

Q How long a period of time have you known him?

A Two years, maybe.

Q Would you consider him a close friend of yours?

A An acquaintance.

Q You ever socialize with him?

A No sir.

Q You ever been to his home?

A No sir.

Q Has he ever been to your home?

A No sir.

Q Did you ever have any dealings with him regardless of their nature?

A No sir.

Q Did you at any time Mr. Talerico, ever discuss, combine with, conspire with or any way, shape or manner, talk with Mr. Mazza about any of the subject matter of this trial?

A No sir.

Q Other than what you have told us, did you ever talk to Mr. King and make any plans with Mr. King, make any arrangements with Mr. King, concerning the subject matter of this trial?

A No sir.

Q Do you know who Al Marrone is?

A Yes sir.

Q He is not present here, is he?

A No sir.

Q How long a period of time have you known Al Marrone?

A Three or four years.

Q Would you say you are a friend of his?

A No sir.

Q Did you ever conspire with, combine with, confederate with or talk with Mr. Marrone about anything to do with this case, in any way, shape or manner?

A No sir.

Q By the way, Mr. Talerico, do you know who the John Doe is who is mentioned in this indictment?

A No sir.

Q Did you ever meet with a John Doe, conspire with and talk with?

A No sir.

Q Mr. Talerico, did you in any way, shape or manner ever threaten Mr. Sackman?

A No sir.

Q Did you ever give Mr. Sackman any reason to be in fear of you?

A No sir.

Q I ask you in conclusion, Mr. Talerico, are you innocent of these charges?

A Yes sir.

MR. MANGANELLI: You may cross-examine.

CROSS-EXAMINATION

BY MR. WELCH:

Q Mr. Talerico, you testified on November 13th, at the Whitesboro Auto Body Shop you were there because you banged up your car?

A Yes sir.

Q What kind of a car was that?

A '69 Pontiac.

Q And where on the car was it banged up?

A In the back, the right back.

Q Would you describe to the jury what the damage was?

A Headlight, the back bumper and the side of the car.

Q Was it a crash or---

A (Interrupting) No, it was pretty-- it was about $300.0 worth of damage.

Q Was it fixed that day?

A No sir.

Q Did you drive it into the garage that day?

A Yes sir.

Q Is that your own car? Do you own that car?

A My wife does, but I drive it.

Q How long had that damage been on the automobile?

A Three weeks.

Q Had you taken it anyplace else?

A No sir.

Q To have it fixed?

A No sir.

Q Did you testify that you did know Mr. Sackman had obtained a loan on September 18th?

A I didn't quite get that.

Q At any time after September 18, 1972, did you know that Mr. Sackman had obtained a loan from Mr. King and Mr. Marrone?

A The only time I knew he obtained a loan was in November.

Q And did you know the terms of that loan?

A Just what Schuyler told me. Sky told me.

Q What did he tell you?

A He told me he owed Al Marrone some money he had borrowed from him.

Q He tell you how much money?

A He told me $5,000.00.

Q Did he tell you how much interest he had to pay?

A No, he never mentioned interest to me.

Q Did he tell you what these two people he described to you and you described as punks, he ever tell you what they had done to him?

A No sir he didn't.

Q You testified that on the 4th, 5th or 6th of the month of November, Mr. Seckman mentioned this September 18 loan to you. From whom did Mr. Seckman say he obtained that loan?

A From Al Marrone.

Q Only Al Marrone?

A Lou King was with him. I asked him who gave you the money and he said, "Al Marrone gave it to me." I said, "Why did you borrow it from him?" He said he needed it for his own personal use. So I said, "Then you should pay it back." But I didn't mention interest or anything of that sort.

Q You did warn him to pay it back?

A I told him, "You should pay it back if you borrowed it."

Q Did you have any suspicions about that loan?

A No I didn't.

Q Mr. Talerico, this banged up car which you just testifi to, where did you sustain that accident?

A Where?

Q Where did the accident happen?

A I banged it at the house.

Q You banged it at the house?

A Yes.

Q Whose house?

A My landlord's house.

Q Did you do any damage to the house?

A No.

Q Did you report the accident to the police?

A Reported it to my insurance company.

Q And what date was that, to the best of your recollection?

A Had to be, I think it was around October 18, 19, 20th. In there someplace.

Q October 18th, 19th or 20th?

A Yes.

Q And then you waited until November 13 to have it repaired?

A No sir, I never had it repaired.

Q You waited until November 13th to get an estimate?

A No sir, I got an estimate before that, but the man had to order parts for it.

Q What man is that?

A Mr. Ferris, the man who owns the Collision Shop.

Q When was the first time you took it to Mr. Ferris?

A Had to be in the early part of November, but I don't recall the date.

Q Did he give you an estimate that day?

A I had an estimate. I had an estimate. I got an estimate from him-- well if I banged the car on the 20th, I must have went in on the 20th or 22nd of the same month and got an estimate.

Q You don't recall when you went in?

A No sir I don't. My insurance company has the estimate.

MR. WELCH: I have no further questions, Your Honor.

THE COURT: You are excused Mr. Talerico.

MR. BRINDISI: May I ask some questions, Your Honor?

THE COURT: Oh yes. I am sorry. You are still subject to cross-examination.

CROSS-EXAMINATION (continuing)

BY MR. BRINDISI:

Q Mr. Talerico, you indicated that Mr. Sackman had a conversation with you when he wanted to know about Al Marrone: is that correct?

A Yes sir.

Q Whether or not those two people were friends of Al Marrone's?

A Yes sir.

Q About the conversation that took place on the 13th with this $350.00, what did you say was going to happen to that $350.00?

A Mr. Sackman gave Louis King $350.00 and said, "Give it to Al Marrone or his wife." And I was standing right there when he told him.

THE COURT: What did King say?

THE WITNESS: King said, 'Give it to him yourself.' Or, "Give it to her yourself." Something to that extent and he said, Mr. Sackman said, 'I don't know the woman. Will you please do me a favor and give it to her."

BY MR. BRINDISI:

Q Did you know that Al Marrone was in jail at that period of time?

A Yes I did.

Q Do you know whether or not Al Marrone had previous convictions for violence?

MR. MANGANELLI: Objection, Your Honor.

THE COURT: Sustained.

BY MR. BRINDISI:

Q Is it my understanding, Mr. Talerico, that you, Mr. Sackman and Mr. King had some business transactions which did not have anything to do with the September 18, 1972 transaction?

A Yes sir.

MR. BRINDISI: Thank you.

CROSS-EXAMINATION (Continuing)

BY MR. SCHOLL:

Q Mr. Talerico, I believe you testified that you do know Jack Zogby?

A Yes I do.

Q Have you ever seen him in the presence of J. Schuyler Sackman?

A No sir.

Q And in your conversation with Mr. Sackman at Geraci's Restaurant on November 11th, Mr. Sackman identified or described two suspects to you; is that correct?

A Yes sir.

Q Did he identify one as being between 30, 35?

A Yes.

Q Big nose, dark hair?

A Yes.

Q He also mention that they were two guys from Buffalo?

A Yes he did.

Q Did you in the course of that conversation say, "I don't know who the hell has got them. They came from New York."

A I think I did.

MR. SCHOLL: Thank you.

CROSS-EXAMINATION (Continuing)

BY MR. LONGERETTA:

Q Mr. Talerico, I believe your testimony was at least between September 18 and November 18, 1972, you have never had any conversation or connection with Carl Mazza concerning this alleged loan?

A Yes sir.

MR. LONGERETTA: That's all.

MR. MANGANELLI: No redirect.

THE COURT: Any recross Mr. Welch?

MR. WELCH: No, Your Honor.

THE COURT: You are excused.

(Witness excused)

MR. MANGANELLI: May it please Your Honor, the court, the defendant James Talerico rests.

MR. SCHOLL: May I approach the bench?

THE COURT: Yes.

(The following discussion took place at the bench between the court and Mr. Scholl outside the hearing of the jurors).

MR. SCHOLL: The defendant Zogby's daughter is a spectator. We would like to have her removed. She is not aware of her father's criminal record.

THE COURT: Just go back and ask her to leave.

THE CLERK: It is almost 1:00 o'clock.

THE COURT: We will take our luncheon recess at this time. Remember my instructions. Don't talk about the case. Don't let anybody talk about it to you.

(Whereupon at 12:55 P.M. o'clock the jury retired from the court room).

THE COURT: 2:00 o'clock.

THE CLERK: Court stands in recess until 2:00 P.M.

(Whereupon at this point a luncheon recess was taken to 2:00 P.M., of the same day).

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AFTERNOON SESSION

APPEARANCES: Same as morning session.

MR. LONGERETTA: May I approach the bench? This is my brother. He would like to sit with me at counsel table. He is my partner.

THE COURT: Oh sure.

MR. BRINDISI: Your Honor, I have a motion to make.

THE COURT: Can't it wait until 4:30?

MR. BRINDISI: I don't believe so.

THE COURT: I will take it at 4:30. You can tell me what it is about.

MR. BRINDISI: I would like to request once again that the trial be conducted in the presence of Louis Charles King.

THE COURT: I already ruled on that. I don't intend to rule on it again.

MR. BRINDISI: There are facilities up there in the auditorium for the jury if the trial is moved there.

THE COURT: Is he able to go into the auditorium now?

MR. BRINDISI: I don't know.

THE COURT: You'll have to make that representation to me before I can consider it.

You told me he couldn't testify until tomorrow morning.

MR. BRINDISI: The doctor told me he would be able to move into the auditorium tomorrow morning.

THE COURT: If he is not able to be there that is it. I can't delay the trial. I will have to call the doctor.

MR. BRINDISI: Also, during the luncheon recess I spoke to Attorney Deery, the attorney for Albert Marrone, and he advised me he talked to the United States Marshal today and he was informed that the jury after being told that they were going to Mass yesterday morning, that they were informed that they were going to take a trip to some institution and it was cancelled, and they had activities planned for the last evening, which was also cancelled.

THE COURT: So what?

MR. BRINDISI: He informed me also that the jury received newspapers and when they got them then they were taken back by the Marshal, and as the court knows the incident that occurred over the weekend, it was all over the front page of the newspaper, where the jury could draw any inference.

THE COURT: This is just the same motion you made this morning in a different guise.

MR. BRINDISI: Your Honor, will you voir dire the jury?

THE COURT: No, I will not voir dire the jury.

MR. BRINDISI: I take an exception to your ruling. Thank you.

THE CLERK: Bring the jury in.

(Whereupon at 2:17 P.M. o'clock the jury was returned to the court room).

THE COURT: All right, proceed.

MR. SCHOLL: If the court please, I would like to call Jack Zogby to the stand.

JACK ZOGBY,

called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SCHOLL:

Q Mr. Zogby where do you live?

A 1148 Leeds.

Q Keep you voice up so everybody can hear you. Are you married, sir?

A Yes.

Q Do you have any children?

A Three.

Q How old are they?

A Fourteen, eleven and six.

Q Mr. Zogby, do you have a criminal record?

A Yes I do.

Q Tell the court and jury of what crimes you have been convicted?

A In '53 for unlawful entry; '55 for burglary and '69 for burglary.

Q Any other crime that you have been convicted of, to the best of your knowledge?

A No sir.

Q Mr. Zogby, do you own a 1966 Maroon Chevrolet automobile?

A I do.

Q And are you employed?

A Not presently, no.

Q Generally what type of work do you do?

A I am a member of Local 35 on construction.

Q You are a laborer?

A Yes.

Q With the Laborers' Local Union; is that correct?

A Yes.

Q During the last year have you been employed or enrolled in the Manpower Program?

A Yes I am.

Q Where is the program held?

A On Columbia Street. Cooking class.

Q You have been studying to be a chef? Have you?

A Yes.

Q You are charged in Count 2 of the indictment in this case with threatening Mr. Sackman on October 30, 1972. Are you aware of that?

A Yes I am.

Q Are you guilty of that crime?

A No sir I am not.

Q You are also charged in Count 7 of the indictment with conspiring with the other defendants to collect an extortionate extension of credit; are you guilty of that crime?

A No sir.

Q Mr. Zogby, do you recall October 30, 1972?

A I do.

Q How do you recall that day?

A October 29 was my wife's birthday and my godchild had an engagement party and I attended that and that is what relates to the 30th.

Q On October 30, 1972, did there come a time when you went to Zogby's Tavern?

A Yes sir.

Q Tell the court and jury where that is located?

A In Schuyler, New York.

Q What street is it on?

A Herkimer Road.

Q Schuyler is just east of Utica; is that correct?

A Yes.

Q Who owns that tavern?

A Mike Zogby and his wife Jennie.

Q Is Mike Zogby related to you?

A Shirttail.

Q Shirttail cousins?

A Fifth or sixth.

Q Do you know the defendant Louis Charles King?

A Yes I do.

Q How long have you known him?

A Maybe four or five years.

Q Have you had business dealings with that defendant?

A Yes I did.

Q What sort of business dealings did you have?

A We had some upholstery work.

Q You were the upholsterer?

A Yes, for ten or twelve years.

Q Do you know the defendant Carl Mazza?

A Yes I do.

Q How long have you known him?

A Five or six months.

Q What is the nature of your relationship with Mr. Mazza?

A Well I know him simply because he was working for somebody that ran a delicatessen and he was sort of helping him out.

Q And I take it you visited this delicatessen?

A I knew the party that ran the delicatessen.

Q And you went in there and saw Mr. Mazza?

A Not see him, but that is when I saw him.

Q You have any business dealings with Mr. Mazza?

A Never.

Q You know James Talerico?

A Yes.

Q How long do you know him?

A Ten or fifteen years.

Q Have you ever been to Mr. Talerico's house?

A No.

Q Has he ever been to yours?

A No.

Q Ever have any business dealings with him?

A No.

Q Did there come a time on October 30, 1972, when you entered Zogby's Tavern?

A Yes.

Q Approximately what time of the day was that?

A I was asked over the night before because of the party there if I could come and clean up the mess there.

Q You were unemployed at the time?

A Yes.

Q What time did you arrive at the tavern?

A 5:30, 6:00 o'clock.

Q Who was there?

A Mike, his wife and a customer or two.

Q What is Mike's wife's name?

A Jennie.

Q Do you know who the customers were?

A No.

Q Had you ever seen them before?

A No.

Q What did you do when you got there?

A I performed duties of cleaning up the mess that took place the night before.

Q What sort of cleaning did you do?

A Cleaned the ashtrays, swept the floor, take out the garbage.

Q How long did it take you to do that?

A Forty five minutes tops.

Q Your best judgment is that when you completed your duties was when?

A [illegible]:30 to 7:00.

Q Then what did you do?

A I went to the bar.

Q Were you sitting at the bar?

A Yes.

Q Who was tending the bar at that time?

A Mike.

Q Mike Zogby?

A Mike Zogby.

Q What did you do then after you sat down at the bar?

A Ordered a drink.

Q And did you have any conversations with Mr. Zogby?

A Yes. Naturally every day talk I presume.

THE COURT: Could you keep your voice up a little Mr. Zogby. I can't hear you.

BY MR. SCHOLL:

Q Now during the course of the evening Mr. Zogby, did other patrons enter the bar room?

A Yes.

Q Do you know any of the people that did enter?

A Yes.

Q Can you tell us who they were?

A About a quarter of seven, seven o'clock, Carmine Talerico came in.

Q Do you know Carmine Talerico?

A I know him a couple of years.

Q How do you know Mr. Talerico?

A Just from local bar rooms and I have stopped in and got gas on occasion at his gas station.

Q Is he a friend of yours?

A Not really, no.

Q You ever visit his home?

A No.

Q Did he ever visit yours?

A No.

Q From your knowledge do you know whether Carmine Talerico is related to the defendant, James Talerico?

A I don't know that.

Q You say he entered the tavern around 7:00 P.M?

A Around 7:00, 7:10, quarter of seven.

Q What did he do when he entered the bar?

A Just sat next to me.

Q You have some conversation with him?

A Just hello, how is business, what is happening. Things like that.

Q Was Michael Zogby part of that conversation?

A He came over and talked to us.

Q You recall anybody else who entered that bar?

A Dick Matthews came in about five or ten minutes later.

Q How long have you known Dick Matthews?

A Less than a year.

Q How do you know him?

A He runs the Schuyler Tavern.

Q How many times would you say you have been in Zogby's Tavern?

A Four, five, six, seven days a week.

Q Do you frequent the place?

A Quite often, yes.

Q Please pinpoint the time as best you can that Mr. Matthews entered the bar room?

A I would say five to ten minutes after Mr. Talerico came in.

Q Around 7:15 or 7:10 or about that time?

A Yes.

Q What happened when he entered the room?

A Mike and Dick decided to choose up sides and were going to play the dartboard game. That is an electronic game.

Q And what happened?

A And we started to play for drinks.

Q I take it you did play for drinks.

A We did play.

Q How many games of darts did you play, if you recall?

A Eight, ten, twelve. I couldn't say.

Q Did there come a time when the four of you stopped playing darts?

A We would stop and he would have a customer to serve, just delay in playing the game where they wanted to continue.

Q There finally came a time when you stopped playing darts?

A Yes.

Q What time was that?

A I would say 8:30, 20 of 9:00.

Q Did somebody leave at that time?

A Yes, Mr. Talerico left.

Q Do you know where he was going at that time?

A He bowls.

Q Did he tell you that he was leaving to go bowling?

A Yes.

Q Did there come a time when Mr. Richard Matthews left?

A Yes.

Q Approximately what time?

A He must have left 9:30, quarter of ten.

Q Did he tell you where he was going?

A No he didn't.

Q You have any conversation that evening with Jennie Zogby?

A After my clean-up duties were done, I would say that she had occasion to come to the bar to make a drink, or order a drink, or whatever it is was taking place in the back room.

Q Between the time that Dick Matthews left-- withdraw that. What time did you leave Zogby's Tavern?

A I left with the others.

Q What time was that?

A 2:15.

Q Anybody leave with you?

A I walked out with Zogby and Jennie.

Q Between the time Matthews left and you left, what did you do?

A Continued drinking.

Q You have a conversation with any other patrons?

A I don't know any other patrons.

Q You talk with Mike Zogby?

A Yes.

Q And Jennie Zogby?

A Not so much Jennie, but Mike.

Q So at approximately 2:00, 2:15, you left the tavern?

A Yes.

Q Where did you go when you left?

A I then may have gone, I am not certain, to LePatio Restaurant or the Drink and Brew, one or the other.

Q What time did you get home that evening?

A 3:30 in the morning.

Q From the time you arrived at Zogby's Tavern until you left at 2:15 in the morning, was there any point in there at all when you left the place and came back?

A None whatsoever.

Q You were always in the building except when you took the garbage out about 5:30?

A Yes.

Q Mr. Zogby, were you at the Howard Johnson's parking lot on October 30, 1972, at approximately 8:00 P.M?

A No sir.

Q Have you ever talked with anyone about a loan that seemed to be the subject of this case?

A I never knew nothing about the loan or never talked to anyone.

Q Have you ever seen J. Schuyler Sackman prior to his first appearance here in this court room?

A That is the only time I have seen him.

MR. SCHOLL: Mr. Zogby, thank you.

THE COURT: Defense cross-examination.

MR. BRINDISI: In reverse order?

THE COURT: That is the proper order.

CROSS-EXAMINATION

BY MR. BRINDISI:

Q You indicated that you saw Mr. Mazza on occasions at a delicatessen in the City of Utica?

A Yes sir.

Q And who owned that delicatessen?

A I can't say the ownership but it would be under the assumption of the ownership---

MR. WELCH: Objection.

THE COURT: Sustained. Strike it out.

BY MR. BRINDISI:

Q Do you know whether Al Marrone had anything to do with that delicatessen?

A I would say yes.

Q And whether or not Carl Mazza worked for Al Marrone?

A I don't know whether he was working for him or helping him.

MR. BRINDISI: No further questions. Thank you.

MR. MANGANELLI: No questions.

MR. LONGERETTA: No questions.

CROSS-EXAMINATION (continuing)

BY MR. WELCH:

Q Mr. Zogby, will you tell us, you said you had been convicted of three crimes?

A That I know of.

Q That you know of?

A Yes.

Q Have there been any other crimes that you were convicted of?

A Yes

Q What are those other crimes?

A Criminal usury.

Q Criminal usury?

A Yes.

Q Now Mr. Zogby you testified about a party at Zogby's Restaurant?

A That's right.

Q What kind of a party was this?

A On the night of the 29th.

Q You tell me. I don't know what night was this?

A The night of the 29th. There was a party.

Q What kind of a party?

A There was a birthday party for Mike and Jennie, their birthdays, they got them together.

Q Do you know when their birthdays were?

A The 24th or the 28th.

Q And this night was the 29th?

A It was a Sunday.

Q That is the night they had the birthday party?

A Yes.

Q You say you came over to clean up the next day?

A Right.

Q How often had you done this in the past?

A One or two occasions.

Q One or two occasions?

A Once she asked me to come and give her a hand, they were going to have something going on there, and I thought I was going to be able to give them a little hand, and as it turned out it didn't materialize.

Q How many times did you do that?

A Just that once.

Q And how many times did you clean up?

A Once.

Q Were you paid for those occasions?

A No sir.

Q Were you a patron of Zogby's Tavern?

A I would say so.

Q Had you been there frequently to purchase drinks?

A Yes.

Q You were a friend or relative of Mike Zogby's?

A Yes.

Q And you had been there frequently?

A Yes.

Q And you just testified that you didn't know any other patrons in the bar?

A Not that night.

Q Oh, not that night?

A No.

Q Is that unusual not knowing the patronage of that bar?

A It was a Monday night and Monday night is ordinarily

what I understand, a slow night. They used to close Monday nights there at one time.

Q But they were open this Monday night?

A Yes, this Monday night they were open. What I am saying is---

Q Just answer the question, please. Did you prior to your testifying here---

A (Interrupting) Yes.

Q (Continuing) ---discuss the case with your attorney?

A Yes I did.

Q Did you discuss the questions and answers he would ask you?

A Of the proper manner to take the stand.

Q Did you discuss the questions and answers he would ask you?

A I had to give him a story where I was and what I was doing.

Q And now you testified that you took the garbage out that night?

A Yes.

Q What time was that?

A Quarter to seven.

Q How are you able to mark that as a quarter to seven?

A I worked a half hour or forty-five minutes and that terminated the job.

Q How are you able to mark where the forty-five minutes began?

A From the time I got there. I arrived at approximately 5:30.

Q How do you know you arrived there at 5:30?

A I was asked to come there at 5:00. I left the house at 5:00 and it takes about fifteen minutes.

Q Do you remember what time you got there on the 29th?

A Yes.

Q What time did you get there on the 29th?

A About 11.

Q Who else was present there on the 29th?

A There were a number of people there for the party.

Q Can you recall any one person?

A I don't know. People from Schuyler. I don't know them at least by last names.

MR. WELCH: I have no further questions, Your Honor.

THE COURT: All right you are excused.

(Witness excused)

MR. SCHOLL: If the court please, the defendant would like to call Jenny Zogby to the stand.

JENNY ZOGBY,

called as a witness in behalf of the defendant Zogby,

* * * * *

DEFENDANT MAZZA: Yes.

MR. SCHOLL: Thank you Your Honor.

THE COURT: All right proceed.

MR. LONGERETTA: The testimony of Louis King is to be an intrical part of the testimony of Carl Mazza and I would like to wait until we---

THE COURT: Proceed with what you have.

MR. LONGERETTA: Very well.

Call Carl Mazza to the stand.

CARL J. MAZZA

a defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LONGERETTA:

Q Carl, just take your time and keep your voice up so the jury and the court can understand you.

Give us your name and address?

A Carl Mazza, 1154 Conklin Av.

Q Is that here in Utica?

A Yes.

Q Are you married Carl?

A Yes.

Q To whom are you married?

A Sharon Mazza.

Q As a result of that marriage, do you have any children and if so will you tell us their names and ages please?

A Joey and Wayne. Joey is five, Wayne is three.

Q Have you lived in Utica all your life, Carl?

A Yes.

Q Were you employed for the past year?

A Yes.

Q And where and when were you employed?

A I was employed on construction until last February. Then I got laid off, when I was waiting to go to work, and I was waiting.

Q Wait until my questions. When was your last employment?

A February of last year.

Q 1972?

A Yes.

Q Who were you employed with?

A I was employed by Saffarelli Construction Company.

W What kind of work were you doing?

A Labor construction.

Q Building construction?

A Yes.

Q There came a time when you became unemployed?

A Yes.

Q And how were you living at that time?

A Unemployment insurance.

Q How long were you paid unemployment checks?

A Twenty-six weeks.

Q When they terminated, what was the source of your living?

A I was forced to go on welfare.

Q Carl, are you acquainted with an Albert Marrone?

A Yes.

Q And Elizabeth Marrone?

A Yes.

Q Your acquaintanceship with Al Marrone when did this start?

A About last April.

Q Tell me how that came about?

A He is a good friend of a friend of mine, Mike Frebrant, and we met in Joseph Geraci's bar.

Q Did the friendship develop from that?

A Yes.

Q Did you do much socializing with him?

A I used to run into him.

Q You have any business transactions with him?

A I worked in the meat business all my life. Mr. Marrone wanted to open a store, he knew I knew the meat business and delicatessen business, and he was supposed to take me as a partner.

Q And when was this?

A It might have been May or June.

Q And what kind of a store was this?

A Meat market and delicatessen.

Q Where was that located?

A On James Street off Seymour.

Q And you say Albert wanted you to become a partner in this business?

A Yes, but I couldn't.

Q Why not?

A I didn't have the money.

Q And he opened up the store on his own?

A Yes, and I joined him.

Q Did he ask you for your assistance?

A Yes.

Q Why?

A Because I knew the business.

Q Can you tell us how you knew the meat business?

A My family had a meat market when I was a kid and I worked in a slaughter house in the winter and construction in the summer.

Q Are your folks alive at the present time?

A No.

Q Are you familiar with Elizabeth Marrone?

A Yes.

Q Is that Albert's wife?

A Yes.

Q What is your acquaintanceship with her?

A I have known her through school together.

Q Did you know she was married to Albert Marrone?

A Yes.

Q You have a relationship with her and Albert Marrone during the course of this store, at these places?

A Yes.

Q Did there come a time when Albert had to leave the store?

A Yes, in October.

Q Early part of October?

A Yes.

Q Was he going to be absent for some time?

A He was going to be absent for nine or ten months.

Q Why was that?

A He had to go to jail in Florida.

Q Who operated this business at that time?

A Anthony and Sara and Elizabeth. I think it was her brother.

Q You work in the store occasionally?

A Yes. I always went there almost every day.

Q Why did you offer this help to them?

A Because they were friends of mine.

Q You say again, referring back, you were involved with the meat business; are you a member of the butcher's union?

A Yes.

Q Did you recently take an examination concerning the meat business?

A Yes. The Federal Meat Inspectors Examination.

Q So is employment available to you as a federal meat inspector?

A Yes.

Q Now during those occasions when you were in the store helping Elizabeth and Anthony and Sara, did there come a time when Elizabeth asked you certain questions about her livelihood?

A Yes.

Q Do you know when the store was operating was it making money or was it a going business?

A Things were very bad. They were not making money at all.

Q Did you know whether Elizabeth had a family?

A Yes. A little boy.

Q And did she ask you to perform a service for her in addition to assisting at the store?

A Yes.

MR. WELCH: Objection Your Honor.

THE COURT: On what grounds?

MR. WELCH: Hearsay.

THE COURT: Sustained.

BY MR. LONGERETTA:

Q Did Elizabeth ask you to perform any service for her?

A Yes.

Q And what was that?

MR. WELCH: Same objection.

THE COURT: Sustained.

A She asked me---

MR. WELCH: Same objection.

THE COURT: Sustained.

MR. LONGERETTA: You can't answer.

BY MR. LONGERETTA:

Q Did you owe any obligation to Albert Marrone and his wife Elizabeth?

A I don't know what you mean.

Q Did you feel that you owed them some favor?

A Yes.

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

Q Did there come a time Carl, when you were called upon to make a visit to Mr. Louis King?

A Yes.

Q Can you tell me when this was?

A I think it was a couple--- I am not sure whether it was a couple or three days before the 18th.

Q Referring to October 18, 1972?

A Yes.

Q Can you tell me why you went to see him?

MR. WELCH: Objection, Your Honor.

THE COURT: Sustained.

BY MR. LONGERETTA:

Q Did you have a conversation with Louis King at that time?

A Yes.

Q What was the extent of that conversation?

A I told him if he knew this man Sackman and that he owes Elizabeth some money and Elizabeth asked me if there was something I could do to get the money back.

Q Is this what you told Mr. King?

A Yes.

Q What did Mr. King say to you?

A He said, "I went to see him. I will make an appointment for you to see him."

Q Did you know Mr. Sackman?

A No.

Q Had you ever met Mr. Sackman in the past?

A No.

Q How did you know about this?

A Through Elizabeth.

Q And did Mr. King advise you that he would do this?

A Yes.

Q Did he tell you when?

A He said it might be Saturday.

Q Was that the following Saturday?

A Yes.

Q Do you know when this meeting that you had with Mr. King occurred? Do you know when you first told him of this conversation?

A I think it was two or three days ahead of time, but I am not sure.

Q What happened in relation to that meeting with Mr. King? Did he arrange the appointment?

A Yes.

Q When did he arrange it?

A He came that Saturday morning to my house.

Q Was that the morning of the 18th of November?

A Yes.

Q What did he say to you?

A He said, "That guy you wanted to see, we will meet him at 12:30".

Q What time did he come to your house?

A Must have been 11:30, quarter of 12:00.

Q Was that the extent of your conversation at that time?

A When he came to the house?

Q Yes.

A Yes sir. I said, "Wait until I get dressed"; and then we went down in his car.

Q And what did the two of you do?

A We rode around a little bit at first, then about 12:30 we pulled in behind Howard Johnson's.

Q You discuss the purpose of your meeting with Mr. King while you were riding around?

A Well yes, yes.

Q What was the basis of that conversation.

A It happens he was trying to get the money for Albert, and he said, "That guy was supposed to pay him on the 1st."

Q Did he say this as a result of your telling him that he owed Elizabeth money?

A Yes.

Q What did you reply in regards to that?

A I said, "Well how come you didn't get it?"; and he said, "I don't know. The guy hasn't got the money."

Q So then did you proceed to meet with Mr. Sackman?

A Yes. Behind Howard Johnson's.

Q That was on Genesee Street?

A Yes.

Q What time did you arrive there?

A About 12:30.

Q Why don't you tell me exactly what happened when you arrived there?

A We pulled in when we got there. Mr. King said, "He is not here yet." He didn't see his car. He said, "I want to make a telephone call."

Q What were you doing?

A I was sitting in Mr. King's car. I was sitting there. Then I heard him yelling for me and I turned around and he called me like this (indicating).

Q Where was he at that time?

A In the middle of the parking lot. I got out of the car. He got in Mr. Sackman's car, the back seat, and I got in the front seat.

Q You heard the business of an incident that occurred while you were in Mr. Sackman's car?

A Yes.

Q And you re-read the transcript a minute ago?

A Yes.

Q Tell us what happened?

A I sat down. Mr. Sackman said, "How did you make out"? I said, "How did you make out?" I didn't know what he was talking about. He started telling me about Robert Castle. He didn't relate to me. I seen him making a motion. I was shook up.

Q He made a motion where?

A Toward like his jacket, here. I didn't know what he was going to do. So I grabbed ahold of him and slapped him. I leaned on him. I was nervous. I was excited. And I told him to pay the money. I said, "You got to pay this money. She needs it." And stuff like that.

Q Did you know what money was to be discussed at the time?

A The only money I know he owed Elizabeth $6,000.00.

Q When he asked you how you made out, you said you didn't know what he was talking about?

A No I didn't.

Q And when money was mentioned you think he was relating to what Mr. King told you about, that he was trying to get this money from this man for Albert?

A Yes.

Q You said he made a motion toward his waist?

A Yes.

Q And you said you were nervous?

A Yes.

Q Why was that?

A I had never seen this guy.

Q What did you do with him?

A I slapped him in the face and grabbed him by the throat here (indicating).

Q Was part of your hand on his neck now?

A Yes.

Q Was that the extent of any violence applied to Mr.
Sackman at that time?

A Yes.

Q And you say you leaned against him?

A Yes.

Q Was this pushing toward the door?

A Yes.

Q What happened after that?

A Then I let him go. Mr. King said, you know, let him
go. Take it easy. I was nervous.

Q Did you make statements through that instinct that
you were experiencing?

A Yes, I must have.

Q Do you recall any of the statements that you made?

A I recall none. I read them, but at the time I didn't
know.

Q You make any threat to him?

A Never have.

Q You ever threaten his family?

A No.

Q Carl, did you ever do anything like this before in
your life? Did you know what you were getting involved
with when you went looking for Mr. King to do a favor
for Albert Marrone and Elizabeth Marrone?

A No sir.

(At this point the witness cried)

MR. LONGERETTA: May I have some water.

May I approach the witness, Your Honor?

(Hands water to the witness).

Q All right. What happened after the conversation that you had with Mr. Sackman when it came to an end?

A Left his car.

Q And Mr. King remained in the car?

A Yes.

Q For a few moments?

A For a few moments.

Q Where did you go?

A I went in Mr. King's car.

Q And then did you drive away?

A Yes.

Q And was there anything more relating to this incident?

A He said, "What happened? How come you did that? You got excited." I said, I was afraid. I saw him move his hands and I didn't know what he was going to do.

Q Carl, did you ever know of any alleged loan that was made by Albert Marrone and Louis King to J. Schuyler Sackman?

A No.

Q You ever meet with Louis King and Albert Marrone prior to September 18, 1972, when they were going to make any loan to Sackman?

A No.

Q You have any knowledge of any loan that was to be made to Sackman by Marrone? And King?

A No.

Q Your only intent by asking Sackman for the money was to do a favor for Elizabeth Marrone?

A Yes.

Q You ever hear of any Panama deal?

A No.

Q You ever have any conversations with King or Marrone or Talerico prior to this November 18 incident?

A No.

Q Actually the only business transaction you had with any one of these people was almost going into a partnership with Marrone in the meat store?

A Yes.

Q Did you ask for this meeting to collect a loan for Al Marrone?

A No.

Q When you entered that car with Mr. Sackman, did you have any intent to scare him or threaten him in any way?

A No.

Q At the end of the tapes when Mr. Sackman said he would pay the money and you said to pay it to Mr. King, why did you tell him that?

A Because I figured he was a friend of his, he would pay him more than me, and I would never see him again.

Q You had not met with him prior to then?

A No.

Q You ever know this man existed?

A No.

Q You ever know of any kind of loan made to him?

A No sir I did not.

Q Carl, you are charged in Count 6 of the indictment that on the 18th of November, that you knowingly participated and willingly participated in the collection of an extortionate loan by Sackman to Louis King and Al Marrone on the 18th of November, the loan they are talking about is the loan made by Louis King and Al Marrone on the 18th of September.

MR. BRINDISI: I object to that. That is just an allegation in the indictment.

THE COURT: I think Mr. Longeretta you perhaps should rephrase the question.

BY MR. LONGERETTA:

Q About the loan that you are charged with - strike that.

THE COURT: Read what the indictment says if you want to.

BY MR. LONGERETTA:

Q Again I repeat, Mr. Mazza, you are charged that you willfully and knowingly participated in using extortionate means to collect from J. Schuyler Sackman an extension of credit in the amount of $4,000.00 given by Louis King and Albert Marrone on the 18th day of September. Were you aware of that loan?

A No.

Q By any action that you had taken on November 18, were you aware of that loan?

A No sir.

Q Did you prior to September 18, did you know of any loan?

A No sir.

Q In Count 7 you are charged with conspiring, confederating and agreeing with the other defendants in this matter to collect an extortionate loan made to Mr. Sackman? Did you talk with any of the co-defendants, confederate with them, conspire with them to use these means to collect this loan from Mr. Sackman?

A No sir.

Q As you stand here now, Carl, are you guilty of that count?

A No sir.

Q Have you ever been involved in violence upon anyone, Carl? Have you?

A No sir.

Q Have you ever threatened anyone with fear to their body, equipment or their life?

A No sir.

MR. LONGERETTA: That is all.

CROSS-EXAMINATION

BY MR. BRINDISI:

Q Mr. Mazza you indicated that you went to see Mr. King about three days prior to November 18, 1972; is that correct?

A Yes.

Q Did he at any time come to see you about this alleged transaction prior to the time of that meeting?

A No.

Q When you went to see Mr. King exactly what did you tell him?

A I told him I wanted to see this Sackman guy. In regards to the money that he owes Elizabeth Marrone.

Q Did Elizabeth tell you that Sackman owed her husband this?

A Yes.

Q She tell you how much money was owed to her husband?

A $6,000.00.

Q At any time did Mr. King tell you that Mr. Sackman owed money to Mr. King?

A Mr. King? No sir.

Q When you went to see Mr. King you told him that you wanted to meet with Mr. Sackman?

A Yes.

Q Exactly what did you tell him?

A I don't remember the exact words.

Q Approximately?

A I said, "Sackman owes---"

MR. LONGERETTA: May I hear the question please?

(The court reporter repeated the question as above recorded).

MR. LONGERETTA: Will you finish the answer.

A (continuing) I said, "Sackman owes Elizabeth some money and I would like to see him, you know, and talk to him about it".

Q What did he say to you at that time?

A He said, "I will make an appointment for you to see him".

Q Did he say when?

A He said, "Maybe Saturday".

Q When you talked to Mr. King, did you at any time indicate to him that you were going to cause any violence to Mr. Sackman?

A No sir.

Q Your appointment was made for the Saturday following this meeting that you had with Mr. King: is that correct?

A Yes.

Q That is November 18, 1972?

A Yes.

Q I believe you testified that Mr. King picked you up at your residence; is that correct?

A Yes.

Q And drove you to Howard Johnson's?

A Yes.

Q And you said you had some conversation with him in the meantime. What conversation did you have with him?

A Well regarding this loan.

Q What was said?

A He said something about he tried to get the money for Al but this guy didn't have the money. He says he wants to be paid by the first.

Q Who wanted to be paid by the first?

A I guess Al or somebody. I don't know.

Q When you were in the car with Mr. Seckman, you said that you slammed him?

A Yes sir.

Q And you pushed him against the door of the car?

A Yes.

Q What did Mr. King do if anything?

A He pulled me off.

Q He pulled you off?

A He grabbed my arm and said, "Take it easy."

Q Did he tell you in words or substance that there was no need to put force on Mr. Sackman?

A I read that in the transcript. He knew I was nervous.

Q Your testimony is that you didn't know anything about that loan on September 18th, except what was told you by Mrs. Marrone?

A Yes.

MR. BRINDISI: Thank you.

MR. MANGANELLI: No questions.

MR. SCHOLL: No questions, Your Honor.

CROSS-EXAMINATION

BY MR. WELCH:

Q Now Mr. Mazza, how old are you?

A Twenty-eight.

Q How tall are you?

A I think I am 5' 9", 5' 10".

Q What is your weight?

A About 270.

Q How old is Mr. Sackman?

A I don't know.

Q Do you know how tall he is?

A No I don't know that either.

Q Do you know what his weight is?

A No I don't know that either.

Q How would you compare him to your weight?

THE COURT: Sustained.

Q On November 18, at Howard Johnson's Parking Lot, did you demand money from Mr. Sackman?

A I might have demanded it, yes.

Q You may have demanded it?

A Well, what I said, I said -- I was very interested----

Q What did you say?

A I don't recall exact what I said, but what I read what I said, I said, "You got to pay this money. You owe this money. You got to pay it."

Q Do you deny that you said what we heard on the tape recordings?

A No I don't remember saying it, but I don't deny it, because it was there.

Q Did you threaten his life that day?

A I think I did.

Q Do you remember saying he was a dead man if he didn't pay?

MR. LONGERETTA: Objection Your Honor. If he is going to recite certain words, the tape is the best evidence and the transcript is the best evidence.

THE COURT: No. Overruled.

BY MR. WELCH:

Q On November 13, did you have a knife in your possession?

A No sir.

Q But you did strike Mr. Sackman?

A Yes sir.

Q Now tell us, so we have it straight, what is it that you say Mr. Sackman did with his hands?

A He made a motion like over here (indicating) with his hands. I didn't know whether he was going to reach for something and like I said, I was nervous, and I went to defend myself.

Q What did you do to defend yourself?

A I slapped him and quieted him and leaned on him like this (indicating), so he couldn't move his hands.

Q And where was Mr. King during all this time?

A On the back seat.

THE COURT: Who drove over there?

THE WITNESS: Mr. King.

THE COURT: Where were you?

THE WITNESS: In the front seat.

THE COURT: What happened when you got there? Did King get out of the car?

THE WITNESS: Yes sir.

THE COURT: And get in the back seat?

THE WITNESS: He got in the back seat of Mr. Sackman's car.

THE COURT: And you were in the front seat of Mr. Sackman's car?

THE WITNESS: Yes sir.

BY MR. WELCH:

Q This is the first time you have ever done anything like this?

A Yes sir.

THE COURT: How long did you know Mr. King?

THE WITNESS: Mr. King? I think I knew him for about a year or so.

BY MR. WELCH:

Q How long do you know Mr. Marrone?

A I knew who he was but I have known him since last April, I guess, to really know him.

Q And you have known Mr. King how long?

A About a year.

Q But Mr. Marrone since last April?

A I knew him but I got to be better friends with Mr. Marrone since last April.

Q Are you better friends with Mr. King?

A Not very good, but I know him.

MR. WELCH: I have no further questions,

Your Honor.

REDIRECT EXAMINATION

BY MR. LONGERETTA:

Q Did you get to know Mr. Marrone through the store on James Street?

A I met him once prior to that. He used to come to James, to the store.

Q About the only time you would run into him would be when he came into the store?

A Yes, when he bought meats.

Q And were you called upon to deliver to him at any time?

A Yes.

THE COURT: Any further cross?

(No response) You are excused.

(Witness excused)

THE COURT: Next witness.

MR. BRINDISI: Outside of the testimony of Mr. King, Your Honor, that is all.

THE COURT: You rest outside of that?

MR. BRINDISI: There are no other witnesses.

THE COURT: Anyone have any witnesses?

MR. SCHOLL: Yes, Your Honor. I would like to call Mr. Talerico. May the record

* * * * *

witnesses, Mr. Brindisi?

MR. BRINDISI: I have the defendant.

THE COURT: Other than King, do you have any?

MR. BRINDISI: No, I do not.

THE COURT: All right. We will recess now until tomorrow morning at 10:00 o'clock. Don't talk about the case, don't let anybody talk to you about it, don't listen to anything on the news cast or television or radio. Don't read anything about it in any newspapers. We are getting down to the wire now. And it is particularly important that you pay attention to my instructions. Good night.

THE JURORS: Good night.

(Whereupon at this point the jury retired from the court room).

THE COURT: All right, Mr. Brindisi, do you have any law now?

MR. BRINDISI: The only law I have is the defendant has the right to take the stand.

THE COURT: Do you have any law on the particular point?

MR. BRINDISI: About going to the hospital?

THE COURT: Yes.

MR. BRINDISI: Not right now I don't.

THE COURT: Does anyone have any objection to going to the hospital? I take it no one does? Does the government object?

MR. WELCH: No objection to taking a deposition.

THE COURT: Not taking a deposition, taking the jury there and hearing the testimony.

MR. WELCH: No objection Your Honor.

THE COURT: Clear the court of spectators.

THE CLERK: All spectators will leave the court room.

(At this point all spectators left the court room)

THE COURT: Have you checked with the Doctor?

MR. BRINDISI: I checked with the Doctor and also the Administrator of the hospital, Mr. Jones, who said he would make available to the Doctor the auditorium of the hospital at 10:00 o'clock tomorrow morning. He said there would be enough room available for as many people as the court feels has to be there.

I told them that there was a probability of between thirty-five and forty people.

I checked with the Doctor yesterday and as I indicated to the court, he told me in his opinion he felt that the defendant could testify. He told me further today I should check with him at 7:00 o'clock this evening and I am going to meet with him at 7:00 o'clock.

THE COURT: You better advise Mr. Evans whether your man will be able to testify tomorrow morning. If he is, court will adjourn to St. Luke's Auditorium at 10:00 o'clock.

MR. BRINDISI: Mr. Jones has requested that the court and whatever members are going to arrive---

THE COURT: Tell the clerk all about the arrangements.

MR. BRINDISI: He said he would have parking space available for the people who would attend.

THE COURT: Is it anticipated that there will be any rebuttal in this case?

MR. WELCH: We are considering at least

one or two rebuttal witnesses Your Honor.

THE COURT: Forget it.

Mr. Manganelli, my rulings on your request to charge are on the margin of this paper that you submitted. Will you look them over so that you know what I am doing. I will hand them to the clerk and they will become part of the record.

Recess until tomorrow morning.

MR. MANGANELLI: I ask if I could be heard?

THE COURT: Before we come to that Mr. Manganelli, in the event we do not proceed there, we will proceed here. We won't know what the situation will be yet. I want you to make sure that the clerk has your telephone number so he can advise you when Mr. Brindisi advises him. The clerk will call you at 8:00 tonight.

MR. BRINDISI: I wonder if I could call the clerk?

THE COURT: No. I want him to call you.

MR. BRINDISI: I will be at the hospital. The number is 79[illegible]-6000.

THE COURT: You leave your numbers with

Mr. Evans.

MR. MANGANELLI: If Your Honor please, I respectfully ask Your Honor at this time to reinstate bail on behalf of the defendant James Talerico. While I am aware of the events over the weekend, nevertheless I feel constrained to say in no way are those events associated with or connected with the defendant, James Talerico.

I am familiar with Your Honor's broad discretionary powers, but I don't feel that this defendant's conduct throughout the course of this trial and before the jury, or his demeanor or past record would in any way indicate to Your Honor, the court, that any conduct of his would in any way impede the orderly process of this trial, or would place the orderly process in danger.

I therefore respectfully request Your Honor that Mr. Talerico be admitted to bail.

MR. LONZERETTA: On behalf of the defendant Mazza, I join in that motion.

MR. MANGANELLI: One other thing, on behalf of the defendant, we would be willing to submit to any type of hearing on the subject that Your Honor would deem fit, and also be subjected to any type of conditions attached to that that Your Honor would see fit.

That is all I have to say Your Honor.

MR. SCROLL: On behalf of the defendant Zogby, I also join in that motion.

MR. LONGERETTA: Just one thing I would like to add, assuming from the reports in the paper that the authorities had the suspect, and apparently it is not one of these defendants here, I would ask that my defendant be allowed to be admitted to bail.

THE COURT: The record is quite clear, Mr. King was found under circumstances which jeopardize, seriously jeopardize the continuing of this trial and the safety of the court personnel and the F.B.I. Agent. The record is replete with acts of violence and also threats of violence to the life of Mr. Brindisi, and the court will protect the process of the court and therefore will continue to decline to let the defendants out on bail at least until the trial is completed, so that the court personnel and the jury are in safe hands.

We would not have had this condition if the United States Attorney had had the sense to make a motion at the beginning of the trial. This is a serious case and one in which the court should exercise its discretionary powers. A serious attempt was made on the life of the F.B.I. Agent, and it is also for the protection of the defendants as well that we are not going to have anything like that again.

I deny the motion.

THE CLERK: Court stands in recess until 10:00 o'clock tomorrow morning.

(Whereupon at 4:30 P.M. O'clock an adjournment was taken to February 27, 1973, at 10:00 A.M.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

LOUIS CHARLES KING, ALBERT J. MARRONE,
JAMES VINCENT TALERICO, JACK ZOGBY and
CARL J. MAZZA,

Defendants.

Cr. No. 72-Cr-283

The trial in the above-entitled matter was continued pursuant to adjournment at the United States District Court in and for the Northern District of New York, at Utica, New York, commencing on February 28th, 1973, before HON. LLOYD MacMAHON, United States District Judge sitting by designation, and a Jury.

* * * * *

(The following took place in St. Luke's Hospital Medical Center at Utica, New York)

JOHN BRADFORD MILLETT

called as a witness, being first duly sworn, was examined and testified as follows:

THE COURT: Dr. Millett, would you state briefly your professional qualifications?

THE WITNESS: Yes. I am a physician and surgeon, a member of the American Board of Surgeons.

THE COURT: Could you give us a little about your background and experience?

THE WITNESS: I went to Harvard College, Harvard Medical School, resident in Massachusetts General Hospital in Boston, practicing here for the last 24 years.

THE COURT: Are you a diplomate in any particular field?

THE WITNESS: Yes, I am a member of the American Board of Surgeons.

THE COURT: How long have you been a member of the American Board of Surgery?

THE WITNESS: Probably twenty years.

THE COURT: Have you attended Louis Charles King recently?

THE WITNESS: Yes I have.

THE COURT: Could you tell me when you first saw him?

THE WITNESS: I can't remember what night. I think it was Friday night.

MR. [illegible]: Probably Saturday?

THE COURT: Was it Saturday?

THE WITNESS: I know I have been on call and it was late in the evening.

THE COURT: Did you conduct an examination on him?

THE WITNESS: Yes sir. I examined him in the emergency room, at which time he was in a critical state, in shock with various rentilations in the body.

THE COURT: Could you tell me what other injuries he had at that time?

THE WITNESS: At that time he had multiple injuries to the body; gunshot wounds.

THE COURT: Could you be more specific exactly where they were?

THE WITNESS: Evidence of internal injury, blood loss and he was taken to the operating room, as soon as we were able to increase his blood pressure to reasonable levels.

THE COURT: What was the site of the injuries?

THE WITNESS: I don't know if I can enumerate them specifically.

THE COURT: As best you can.

THE WITNESS: There were two in the left shoulder; one in the right axillary; two in the chest; one through the sacrum; one through the end of the lateral aspect of the left knee; one in the exterior left thigh; one in the anterior left thigh; I counted a total of approximately fifteen perforations made. We could pick up eleven or twelve metal objects or buckshot made by.38 special pistol bullets.

THE COURT: What has been your course of treatment or surgery?

THE WITNESS: He was taken to the operating room and further transfusions were given and on opening his abdomen, we were able to remove one bullet from the region of the naval, which we feel entered his left posterior abdomen. This had penetrated the large bowels to the point where perforation was imminent and he was given a colostomy. He had other perforations to his small bowel and it was possible to remove three feet of intestine to take care of these multiple perforations. After probing we found massive hemorrhage which required opening and locating a large vein which we had to completely sever. The artery was completely severed. Two metal particles were removed, one from his chest wall on the right and one over his right axillary, in addition to the one in the navel which we felt it was wise due to his condition to leave at this time and remove at a later date.

THE COURT: When did you last examine him?

THE WITNESS: Last night.

THE COURT: Is he rational?

THE WITNESS: Yes.

THE COURT: How long has he been rational?

THE WITNESS: I would say since the morning after his injury.

THE COURT: Could you state your opinion as to whether he is presently able to testify in the case now on trial in which he is charges as a defendant in a loansharking conspiracy case, which carries a maximum penalty of twenty years if he is convicted, bearing in mind the emotional factors involved in that and the fact that he would have to submit if he testifies not only to direct examination but to cross-examination as well by--- he would be subject to cross-examination by at least five lawyers as well as direct examination by at least one, and that the evidence shows so far that his testimony might be fairly comprehensive and lengthy. Are you in a position, do you have an opinion as to whether he is physically able to testify this morning here at St. Luke's Hospital without impairing his life?

THE WITNESS: I would say if this court recognizes that he is an ill man and that its duration might have to be reasonably short, I would say an hour might be-- I can't say for sure whether he will be able to contirne with an hour or not, but I would feel that it would be good to keep his investigation, I mean his interrogation at this time within a reasonable period. And with that understanding, and the understanding of Mr. King if he is tired that he will so state, I feel he is competent to do this and he is quite anxious to do it.

THE COURT: If he should tire would he be able to later resume shortly thereafter?

THE WITNESS: Yes, I see no reason why a rest period of an hour or two he could not go through another additional period.

THE COURT: Would you be able to be at hand while we conduct this, should we give you any signals?

THE WITNESS: I have asked that his nurses be with him during his session here. I am due in surgery at 10 o'clock and immediately thereafter I am due in the hospital in Herkimer.

THE COURT: Is he able to speak?

THE WITNESS: Yes.

THE COURT: Audibly?

THE WITNESS: Yes, in this room he would be able to be heard.

THE COURT: We are going to do this I think in the cafeteria, a converted cafeteria, would he be able to be heard there without electronic assistance of any kind?

THE WITNESS: I feel that he might be less strained if he had a microphone.

THE COURT: All right. We will try to make that available.

What is his appearance at the moment? Is there anything shocking or horrifying in his appearance?

THE WITNESS: No. He has a tube in his nose and intervainus in his arm and he has a bandage around his head which can be reduced, and a small bandage in the back of the head.

MR. BRINDISI: If Your Honor please---

THE COURT: Just a moment Mr. Brindisi. Let me ask the Doctor some questions then you can speak. Will it be necessary to have all these tubes while he is testifying?

THE WITNESS: The tube in his nose must be there.

THE COURT: While he is testifying?

THE WITNESS: While he is testifying, yes.

THE COURT: What about the intervainus feeding?

THE WITNESS: Those things can be removed and replaced should they think it would be in the best interest of the patient.

THE COURT: It would be in the interest of justice if they were removed, but I would have to leave that to you. The more normal his appearance the better.

THE WITNESS: I feel officially his use of the tube doesn t interfer with his speaking or his facial expressions.

THE COURT: You think in the interest of the patient you should keep it there while he testifies?

THE WITNESS: Yes.

THE COURT: All right. You may ask any questions.

MR. BRINDISI: I was going to indicate to Your Honor that I met with the defendant. His bandages on his face have been removed. The only thing that is there are the tubes that the Doctor indicated, and a small bandage.

THE COURT: I will take a look at Mr. King before he is brought out.

Anyone else have any questions?

MR. BRINDISI: No Your Honor.

THE COURT: All right. Thank you very much Doctor for your cooperation.

(Witness excused)

(At this point the court, Mr. Brindisi and the court clerk left the room and visited the defendant King's hospital room, after which the following occurred outside the presence of the jury).

THE COURT: I just want the record to note that in the presence of Mr. Brindisi, counsel for the defendant King, and the clerk of the court, Mr. James Evans, the court viewed Mr. King to make sure there was nothing in his appearance which would unduly shock the sensitivity of the people on the jury or in any way work undue prejudice on any of the other defendants.

Mr. King as the Doctor described does have a tube in his nose and another interveinus feeding tube on his right arm I believe.

Nothing was said while we were there. I instructed Mr. Brindisi not to have Mr. King speak to me in any way.

Having viewed him, I don't think his appearance is any worse any of us have seen with members of our family, in this day and age, of interveinus feeding and tubes in the nose, or the sort of thing that people look at on television every night of the week, so I don't see that there is any prejudice to anyone from his appearance.

Do you wish to deny or confirm what I said?

MR. BRINDISI: Everything Your Honor said is correct.

THE COURT: Now I want some ground rules here. You all heard what the Doctor said. I want this kept to a tight questioning and I don't want you wandering all over, I want you to stay on the target, relevent, material evidence. I don't want cumulative interrogation. If Mr. Welch asks something there is no point in another asking it. In short, I don't want anything prejudicial.

Mr. Brindisi, I have not the slightest notion what this man is going to say, but it better be material and relevent testimony, otherwise I will be obliged to cut it off. In short, I don't think the incidents of the other evening have anything to do with this case at all, as far as the merits of this case goes, and I think we should avoid getting into that topic.

MR. BRINDISI: I have no intention of getting into that topic.

THE COURT: All right. You all understand it. Be on the ball and let's see if we can do it in a practical way. All of us.

MR. BRINDISI: Thank you.

(The following proceedings took place in the Allen Elender Auditorium at St. Luke's Hospital where all attorneys were present as was the jury and some spectators).

THE COURT: I just want to let this be noted that this is taking place at counsels' table. I just want the record to reflect that members of the family of the defendant have been admitted as spectators at this session of the court, as well as one member of the press.

MR. BRINDISI: May I approach the bench please?

(The following discussion took place at the bench outside the hearing of the jury).

MR. BRINDISI: It is my understanding that we could use an amplifyer to pick up the voice.

THE COURT: Yes.

MR. BRINDISI: Fine. Thank you.

(At this point the defendant King was brought into the court room. The other defendants having previously been taken into the court room).

THE COURT: All right, proceed.

LOUIS CHARLES KING

a defendant, called in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRINDISI:

Q Louis, you will have to speak into the microphone so everybody can hear you.

A All right.

Q Your full name is Louis Charles King, Jr?

A That is correct

Q Are you married?

A Yes I am.

Q How many children do you have?

A Three children.

Q And how old are they?

A One is twenty, sixteen, thirteen.

Q And are you employed?

A Yes I am.

Q By whom are you employed?

A Marcy State Hospital.

Q In what capacity?

A As a supervising painter.

Q How long have you been employed at the Marcy State Hospital?

A Fourteen years.

Q Prior to being employed by Marcy, who were you employed by?

A Brunner Manufacturing Company.

Q Brunner Manufacturing Company?

A Right.

Q For how long a time were you employed by Brunner Manufacturing Company?

A Eleven years.

Q Do you know J. Schuyler Sackman?

A Yes I do.

Q For how long a period of time have you known J. Schuyler Sackman?

A Three or four years.

Q Tell the court and jury how you got to meet him?

A I met Schuyler Sackman in Syracuse, in Soo Lin's Restaurant. A friend of mine owns or runs the restaurant. This is the first time I met him there, on Erie Boulevard. The second time I met him was at Jim Talerico's house in Yorkville.

Q So the second time you met Sackman was at James Talerico's house, one of the defendants in this case?

A Right.

Q After you met him at Talerico's house, when was the next time you met him?

A Well I met him many times after that. Many times after that.

Q Were you friends?

A Yes, we were friends.

Q Did there come some time when you met him at the office of John Longo?

A Yes I did.

Q Do you recall when that was?

A That was three years ago, probably, or two.

Q Two or three years ago?

A Two or three years ago.

Q Do you recall that meeting at Longo's Office--- what took place at that time?

A Well I have known John a long time, and John was in there arguing with Schuyler Sackman at that time. He was arguing over, him and John were arguing over $20,000.00 that John went out in hock for and borrowed from the bank, and I told Sackman, "Why don't you go out and get the gol-darn money and give it to him and stop playing around.' One word lead to another, he hit me and I hit him, and that was the result of that.

Q After that incident, did you make up with him?

A Yes, we were very good friends after that.

Q You became good friends?

A Very good friends.

Q Since that incident were there occasions when he would come to your house?

A Many times. Many many times.

Q Would he meet with you and your family?

A Yes.

Q Have you been to his house?

A I have been to his house twice.

Q You been to his house twice?

A Yes.

Q As you know you were indicted for loaning some money to him on September 18, 1972. Now I want to ask you whether or not you had some meetings with Sackman prior to September 18, 1972?

A Yes I have.

Q And how often would you meet with him prior to September 18, 1972?

A Sometimes every other day, and sometimes three or four times a week.

Q Do you know the type of business Mr. Sackman was in?

A The real estate and insurance business.

Q Real estate and insurance?

A Yes.

Q Did you have any business relationship with him?

A Well, we never got it off the ground. It was over in Binghamton. Or around Binghamton. He was talking about putting a bank in over there and he was going to get the money from Robertson and John Longo, a Vice-President in a bank in Utica, and he told Robertson he was going to make him president of the bank.

Q Did he discuss your going into the real estate business with him?

A I don't follow you.

Q He ever discuss going into the real estate business with you and him as partners?

A Yes he did. He brought me a book and told me to read it and this would be our business transactions in the near future and we talked about money and things.

MR. BRINDISI: May I have this marked?

(Book marked as King's Exhibit K-1 for identification).

BY MR. BRINDISI:

Q Mr. King, I show you Exhibit K-1 marked for identification and ask you whether or not this was the book that was given to you by J. Schuyler Sackman?

A Right.

Q Do you recall when that book was given to you?

A Just about that time, about a month before September.

Q About a month before September?

A Right.

Q Did Mr. Sackman make some kind of notation inside this book to you?

A Yes he did.

Q I show you a writing inside the book and ask you whether or not that was written in there by J. Schuyler Sackman in your presence?

A Yes it was.

MR. BRINDISI: I would like to offer Exhibit K-1 in evidence.

MR. WELCH: We have no objection.

THE COURT: Show it to other counsel.

(Mr. Brindisi hands book to defense counsel).

MR. MANGANELLI: No objection.

MR. LONGERETTA: No objection.

MR. SCHOLL: No objection.

THE COURT: Received.

(Defendant King's Exhibit K-1 for identification received in evidence).

MR. BRINDISI: Your Honor, may I read the inscription to the jury?

THE COURT: Yes. Sure.

MR. BRINDISI: (Reading) "This is how real estate fortunes are made." And inside it says, "To Lou: Good luck in your new venture. Hope this book helps. Sincerely, Sky."

BY MR. BRINDISI:

Q After you had discussed this real estate transaction or transactions with Mr. Sackman, you say a month previous to September, 1972, he ever come to you for money?

A Yes he has.

Q And what did you tell him if anything concerning borrowing some money?

A He wanted to borrow some money so he could take care of his personal obligations around the house before he could get started in deals he was working out, because he said he could not leave the house five minutes without someone rapping at the door. I told him I had no money at that time. He kept looking and looking. He came down to the house and was talking to the kids about various things, and he was asking for the money, but I never gave him any money because I didn't have any.

Q Besides talking about legitimate transactions with you, did he talk about illegitimate transactions with you?

MR. WELCH: Objection Your Honor.

THE COURT: Sustained.

Q All right. Did there come some time, on September 13, 1972, when you met with Schuyler Sackman? That is the day they claim the loan was made?

A September 13?

Q September 18.

A Yes.

Q Where did you meet with Schuyler Sackman on September 18, 1972?

A In Pin O Rama Bowling Alley, on Genesee Street.

Q Pin-O-Rama Bowling Alley, on Genesee Street?

A Right.

Q What time did you arrive at the Pin-O-Rama Bowling Alley on September 18, 1972?

A Somewhere in the neighborhood of 7 o'clock.

Q While you were there, did you arrive with Mr. Sackman or did he meet you there?

A I think I told him to meet me there. I met him earlier in that day and told him to meet me at Pin-O-Rama, to drive his own car because it was raining.

Q Did you meet him on that day at Pin-O-Rama?

A Yes I did.

Q What time did he arrive there?

A It was after 7 o'clock.

Q And did you have some discussion with him at the Pin-O-Rama when he did arrive?

A I did.

Q Can you tell the court and jury what that discussion was?

A He said he was going to borrow some money from Al Marrone, and I advised him not to take the money from Al Marrone, and he wanted to know why, and I said he was asking for trouble.

Q What did you mean by that conversation?

A Previous to that I borrowed money and I got myself into a mess, and I knew what could happen. He said he was in a desperate position, he had to borrow the money and if anything happened he could get the money from his father.

Q Did you indicate that you had borrowed money previously?

A I told him that. It is right in the manuscripts. I didn't know I was being taped either.

Q Try to answer the questions that I put to you. Was Al Marrone there when you had this conversation with him at the Pin-O-Rama?

A No he was not. He came in later.

Q He came in later at the Pin-O-Rama?

A Between a quarter of 8:00 and ten of.

Q What occurred then?

A We were sitting at the bar now and Sky said, "Have you got it?" And I saw an envelope being passed. I didn't know what was in the envelope.

Q You saw Al Marrone hand him an envelope?

A Right.

Q You have any conversation with Al Marrone about that transaction, the business of that envelope, before September 18, 1972?

A No I didn't. It was the 19th.

Q The day after?

A It was the 19th when he told me he gave him the money.

Q Let's get back before the 19th. You were in court and heard testimony that this loan was made at the Ramada Inn on September 18, 1972; is that correct or is it not correct? Was the money given at the Ramada Inn or at the Pin-O-Rama?

A I can only tell you that is when I seen the money passed.

Q Where was the envelope passed?

A That was at the Pin-O-Rama. At the Pin-O-Rama.

Q After September 18, 1972, you indicate that you had some conversation with Al Marrone; is that correct?

A That is correct.

Q Where did that take place?

A That took place at the Ramada Inn on the 19th.

Q At the Ramada Inn on the 19th?

A Right.

Q What was said by you to Mr. Marrone and what did Al Marrone say to you?

A I told Al he should not have given it to him. It is only asking for trouble. He said he felt he wanted to take a chance and go ahead with this business he was getting into with Sackman.

Q And that is the reason why he was loaning him the money?

A Personal obligation around the house. That is what he said he had.

Q After September 19th, or on September 19th, did you see Mr. Sackman?

A The 19th of September?

Q Right. This is the day after the loan was made.

A I have seen him several different times. I don't know if it was exactly the 19th. It could have been the 20th.

Q You have any conversation with him about that loan either on the 18th or 19th of September 1972?

A Well we didn't discuss it too much because nothing was being said about it. I guess nobody would bother him. We didn't discuss the loan any more. We talked about other business.

Q Was this a daily type affair?

A Sometimes it would be three or four times a week and sometimes more than that.

Q Would this have to do with some real estate transaction he was discussing with you?

A Right.

Q You heard the testimony of October 30th, you were in the car with Jack Zogby and another named John Doe and some threatening gestures were made to Mr. Sackman; is that true?

A No sir. That is not true.

Q Were you ever in a car with Mr. Sackman when anyone else made a threatening gesture to Mr. Sackman?

A He told me about it the day after. He wanted to know if I knew who it was. I said I didn't know anything about it. I said, "I told you this would happen." He went to see Jim Talerico and Jim told him, "I don't know who they were." I think he said, "A couple of kids". I was never in any car on the 30th of October.

Q Were you ever present on October 30th when a knife was put to his head or a gun? On October 30th were you in a car with Jack Zogby and some other individual when a gun was put to his head and a knife to his throat?

A Never at any time.

Q Did there come a time after October 30th, when Sackman told you that this took place?

A Yes, he told me one put a gun to his head and one a knife to his neck, and he asked if I knew who they were. He tried to describe them, and I didn't know who he was referring to. I told him he had a serious problem and don't involve me any more. Get the money and get it straightened out.

Q Did he tell you that there was any interest on this loan, at any time?

A Sackman himself?

Q Yes.

A He said there was interest.

Q He tell you how much interest there was?

A No.

Q After October 30th did he ask you to do anything for him in regards to this loan at all?

A Yes, he asked me to see Liz or her husband.

Q Who do you mean by "Liz"?

A That is Al Marrone's wife.

Q Did you see Liz after October 30th, 1972?

A Yes, I seen her a few times.

Q What happened on those times?

A Well when he couldn't come up with the money, she said she wanted $1,000.00 of it back at a time, and there was no rate of interest. She said she just wanted the principal back, and she said another time,-- I guess he didn't have the money--

MR. WELCH: Your Honor, this is all hearsay.

THE COURT: Yes. Sustained.

Q In any event you indicate that you did talk at one time to Mrs. Marrone concerning this transaction?

A Yes I did.

Q Now on November 11, 1972, there was some indication that you talked to Mr. Sackman regarding this loan; is that true?

A November 11?

Q Yes. November 11th. There is indication that he came to your house and discussed this transaction with you, and I believe you heard him testify that this was a taped conversation; do you recall that?

A Yes I do.

Q Now in that conversation he indicates to you that he would have a thousand dollars by the following Monday. Now what was that conversation about?

A Liz said she wanted a thousand dollars of that money back.

MR. WELCH: Objection Your Honor.

THE COURT: Sustained. Mr. Brindisi, please avoid hearsay. You know what hearsay evidence is. Let's not have that happen again.

BY MR. BRINDISI:

Q Now during that conversation Mr. Sackman indicate to you that he had to get this money and he didn't like looking down a gun?

A I said I knew that.

Q That's right. You said you knew that. What did you mean by that?

A Well I wouldn't either.

Q You didn't like looking down a gun?

A No.

Q Were you with him anytime when the gun was placed to his head or a knife placed to his head?

A No, not at anytime.

Q After you had that conversation with him, he indicate to you at that time that he had been shylocked in some way, and what was your response to him at that time?

A I am only repeating what he told me, that he had been shylocked and I didn't know exactly the amount of interest he was even talking about. That is all I knew, that I was being put in the middle of it and I kept trying to keep away from him like poison, and he said it a couple of times in that transcript about making money in other business, and I didn't want to be bothered with it.

Q Did you ever loan any money to Schuyler Sackman on September 18, 1972?

A No.

Q The money that he claims was loaned to him by Al Marrone, was that any part of your money?

A No, not at all.

Q The money he claims was loaned to him, did you at any time make any threats to him to collect it by means of violence?

A No sir, I never made any threats, except where he told me he was being threatened, I told him this would be the problem he would be faced with if he didn't pay it back.

Q There is indications on the tapes that were played where you told him this was a very serious thing and he had serious problems?

A That's right.

Q What did you mean by that?

A Like I said, I borrowed money myself, and I found it very difficult to pay it back, and I know what the problems are, and I only borrowed $500.00, and he is talking about $4,000.00.

Q Now during this period of time when he was coming to your house and you talked about this loan, and you were on tape, were there other occasions on other days when he would come to see you about other business, other than this particular transaction?

A Yes.

Q And how often would he see you during this period of time?

A Sometimes like I said every other day.

Q So that there were times when he did talk to you when he was not recording, that you had conversations with him?

A Right.

Q Did he mention in those conversations to you, which were not recorded, anything about this loan?

A No. We discussed it at various times. I told him that I told him not to borrow it, and I made a couple of suggestions, maybe he could go down and talk to his father, because his problems were serious, and he said his father bought a condominium and had put up $6,000.00 or something, and we talked about various ways of him getting this money back. I didn't want to see him get in trouble. He was supposed to be a friend of mine, not an enemy. He was over to my house every day.

Q Was there another conversation that you had with him on November 16, 1972, in which you indicated or he indicated to you that he had to pay back the $4,000.00 in principal, and then he asked you, "What is going to happen to the interest?" And what did you tell him at that time?

A I didn't say a word to him about any interest. The last time Liz told me, there was no interest. She just wanted the $4,000.00 back.

MR. WELCH: Objection, Your Honor.

THE COURT: Strike it out. It is hearsay.

MR. BRINDISI: Your Honor, may I be heard on this?

THE COURT: No. Not at this time. It is hearsay. Just plain hearsay.

BY MR. BRINDISI:

Q When you mentioned in the tapes that they expected the money back by the following month, who did you mean by "they"?

A Al Marrone and his wife.

Q Do you know whether or not Al Marrone was in jail during that period?

A Part of that time he was. Most of the time he was.

Q Before the 16th of November there has been testimony that you met with Sky Sackman o November 13, 1972 at the garage when Jim Talerico was present, when he brought in $350.00. Tell us about that?

A Yes. That was about noon, sometime around noon. Jim I think-- I got there first, and Jim got there second, because Jim had some parts ordered for his car. His car was supposed to be worked on that particular day, and Sky Sackman came in and said, "I got $350.00". That is the first time that he came up with any money to pay back on this loan. He wanted to know if I would give it to Liz. I said, "Don't involve me". He said, "You know her; so that we get our situation straightened out, why don't you give it to her". I told him I didn't want to get involved. We argued. He wanted to know what kind of a friend I was by not giving it to his wife, so he wouldn't have to get down to see her, and he didn't want to-- he was not doing business with her, and we for about ten or fifteen minutes argued back and forth. And I told him I would help him and take it to Liz.

Q Did Jim Talerico have anything to do with this loan or transaction?

A Not at all. Nothing. Not one single thing. When he came up to my house, he would call Jim and tell him to get ahold of me. Sometimes he referred to "that fellow across the water", or "across the moat". Jim had nothing to do with this loan. The only part was Sky Sackman told him himself he borrowed this money.

Q Now after the 13th and after the $350.00 was paid---

A (Interrupting) Well it was not paid. She wouldn't accept the $350.00. When I brought the money to her she said she would not accept the $350.00. She wouldn't accept it. She expected at least a thousand dollars.

Q And this is the day that you are talking about in the transcripts?

A I said the money was underneath a dish and she wouldn't take it. The money was underneath a dish and it was still there where I had put it.

Q Now in the transcript of November 16, 1972, there is indication that Mr. Sackman would have to pay the $4,000.00 by the following Saturday, and he asked, "What is going to happen if I can't pay the whole $4,000.00 by Saturday", and you said, "I don't know".

A That's right.

Q Then he asked you if he could meet with other representatives again and you made the remark that "People who loan that kind of money don't expose themselves to hoodlums and they are not people to get involved with."

A That's right.

Q And he also testified that you said that you borrowed $500.00 yourself. Now what did you mean by that?

A It was leading questions that was to entrap me. I didn't know who he was referring to. I said, "They are nothing but hoodlums and probably you wouldn't get to see those people." I didn't know I was being taped.

Q He also indicated in that conversation that you didn't want to be the in between guy. What did you mean by that?

A Exactly what it means. I didn't want to get involved and get myself in some trouble. He started with this loan. I told him not to borrow it; told Al not to give it to him, and there would have been no problems.

Q Now after the 16th of November of 1972, you met again with Mr. Sackman and Carl Mazza on November 18, 1972. Would you tell us what took place between November 16 and November 18, 1972?

A Well Carl Mazza came over my house three or four days before I made the appointment. Carl came over and said Liz sent him over and he wanted to talk to this Schuyler Sackman. He asked if I knew him. I said, "Yes. He is a personal friend of mine." He said, "Do you think you could make arrangements where I could get to talk with him"? I said I would. I said I didn't know exactly when, but it will take a few days. I don't know whether that appointment was the 18th or not.

Q The tape says it was on the 18th?

A It might have been the 18th, but I don't know. I saw Sky earlier that morning. He said he was going down to see Bob Castle of Castle Ford Company in Herkimer, to see if he could get some money from his cousin, Bob, there. Then he said after that, that he would-- he said he would be back about 12:30. He went down to see Bob Castle and Bob Castle was up here. So he didn't get to see Bob Castle. One word lead to another and I was going to use the telephone booth myself. We went to meet Carl Mazza, and he asked Carl, "How did you make out?" And Carl said, "How did you make out?" And one word lead to another, after discussing things he reached up and gave him a slap across the face and grabbed his throat with his right hand. I checked him and said, "This is all uncalled for. Leave him alone."

Q And now after that occurred in the car, did you have some conversation with Sackman after Mazza got out of the car?

A I think I did, but I don't know exactly word for word, except I bawled him out for getting me in trouble. I said, "This is what I meant about involving me."

THE COURT: I think that we will take about a five minute recess.

MR. BRINDISI: Thank you, Your Honor.

(Whereupon at this point a short recess was taken after which the trial was continued).

THE COURT: All right, proceed Mr. Brindisi.

MR. BRINDISI: Thank you Your Honor.

DIRECT EXAMINATION (continuing)

BY MR. BRINDISI:

Q Now Lou, do you recall December 1st, 1972 when Sackman called you from Syracuse and told you he had a thousand dollars. Do you recall that conversation?

A I remember some of it. Not all of it.

Q And when you indicated or when you told him--- strike that please. In that conversation he tells you he is going to New York but he wanted to talk to you. What was that about?

A That is the point we were trying to make on December 1st, when he said he was going to New York City. I said, "Before you go to New York City, I want to talk to you". He said, "I have a thousand dollars for that guy," and I said, "I don't have the time to pick it up", which I didn't. I said "I want to see you before you go to New York." I said, "Maybe Jim can come down because I don't think I can make it this afternoon." So he thanked me and I did meet him that afternoon.

Q Did you at any time tend to use any force or threaten

Mr. Sackman with any force to collect the loan which was made on September 18, 1972?

A I did not.

MR. BRINDISI: Your witness.

THE COURT: Defense counsel examine please.

MR. MANGANELLI: I have no questions Your Honor.

MR. SCHOLL: No questions.

MR. LONGERETTA: No questions if your Honor please.

CROSS-EXAMINATION

BY MR. WELCH:

Q Mr. King, do you know the two men that threatened Mr. Sackman on the 30th of October?

A Do I know them?

Q Who are they?

A I don't know them. Only what he tells me.

Q Do you know who gave Mr. Mazza the knife he used on November 18?

A The knife---

MR. BRINDISI: Objection, Your Honor.

THE WITNESS: I didn't see any knife.

THE COURT: Overruled.

Q Pardon. I didn't hear the answer.

A I didn't see any knife.

Q You met Mr. Mazza at Howard Johnson's on November 18th?

A On November 18th?

Q Is that what you testified to?

A I asked him to be---

Q At Howard Johnson's?

A Right.

Q And you got into Mr. Sackman's car on the 18th?

A I did.

Q Did you get in the back seat?

A I was using the telephone booth.

Q Did you get in Mr. Sackman's car?

A Yes I did.

Q You get into the back seat?

A Yes I did.

Q You said you didn't want to get in the middle of this?

A There wouldn't be any room---

THE COURT: That is argumentative.

Q Are you a friend of Al Marrone's?

A Am I a friend of Al Marrone's?

Q Yes.

A So called friend.

Q All right. Thank you.

A So called friends.

Q Did you make any report to the law about Mr. Sackman's problems?

A About Mr. Sackman's problems? No I have not.

MR. WELCH: I have no further questions Your Honor.

THE COURT: Has anyone else any further questions?

MR. MANGANELLI: I have not.

(Witness excused)

(All right, this session of court will now recess and resume at the Federal Court House in the usual part. I would like you to not talk about the case among yourselves or the testimony you heard now. In fact I direct you not to let anybody talk to you about it or listen to any radio or look at any T.V. about it, nor are you to speculate about Mr. King being here. Suffice it to say over the weekend he was injured. Wait until you hear all the case. It is not finished yet, so don't talk about it even among yourselves.)

The Marshals can now take the jury.

(At this point the jury retired from the auditorium).

THE COURT: We will recess now until

2:00 o'clock.

MR. BRINDISI: Your Honor, I have a motion to make. Mr. King has asked me to ask the court that the trial be continued in his presence.

THE COURT: No, I won't do that. Facilities here simply are not adequate to continue the full trial. We are imposing on the hospital as it is and their facilities are not adequate in any respect other than for emergency purposes for which we used them, and that is it.

MR. BRINDISI: May I have an exception please?

THE CLERK: Court stands in recess until 2:00 P.M.

(Whereupon at 11:55 P.M., a recess was taken to 2:00 P.M., of the same day).

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AFTERNOON SESSION

APPEARANCES: Same as morning session.

(The following took place in the court room without the jury being present).

THE COURT: I deny the government's proposed instruction number 11. I will grant the substance of the defendants A, but not in the form requested and I deny B and C in the form in which you request them. It is not accurate either in the evidence or in the law. Proceed.

THE CLERK: Bring the jury in.

THE COURT: I also don't appreciate any request to charge three days late. From either side.

(At this point the jury was brought into the court room and seated in the jury box).

THE COURT: All right, proceed.

MR. SCHOLL: If it please the court, Your Honor, I would like to call Richard Matthews to the stand please.

THE COURT: Just a minute. Do you rest Mr. Brindisi?

MR. BRINDISI: Yes I have, sir.

THE COURT: All right.

* * * * *

A Well had a couple of drinks, played the electronic dart machine, I think they call it.

Q Did you play that alone?

A No.

Q Did you play that with anyone else?

A Yes. Carmine Talerico was my partner. We played against Mike Zogby and Jack Zogby.

MR. WELCH: I have no further questions, Your Honor.

THE COURT: You are excused.

MR. SCHOLL: Thank you Your Honor.

THE COURT: Do all the defendants rest?

MR. BRINDISI: Defendant King rests.

MR. SCHOLL: Defendant Zogby rests.

MR. MANGANELLI: The defendant Talerico rests.

MR. LONGERETTA: Defendant Mazza rests.

THE COURT: The jury may be excused.

(At this point the jury retired from the court room).

THE COURT: All right, make your motions.

MR. BRINDISI: Your Honor, on behalf of the defendant Louis King, at this time I move for a verdict of acquittal and renew my motion at the end of the People's case, on the ground the People have failed to establish the guilt of the defendant on each of the counts.

THE COURT: Denied.

MR. MANGANELLI: On behalf of the defendant, James Talerico, I renew my motion under Rule 29 for a direction of acquittal on the grounds previously set forth, and the ground the testimony elicited for the defendants, which appeared to be uncontroverted, establishes the innocence of my client.

THE COURT: Denied.

MR. SCHOLL: On behalf of the defendant Zogby, I make the same motions.

THE COURT: Denied.

MR. LONGERETTA: On behalf of the defendant Mazza, I renew my motions made at the end of the government's case.

THE COURT: Denied. Any rebuttal?

MR. WELCH: I have one witness. May I make a proffer?

THE COURT: Yes. All right. Come up to the bench.

(The following discussion took place at the bench between the court and counsel).

MR. WELCH: Your Honor, yesterday in his

testimony, Mr. Mazza stated that he had never done anything like this before. On August 19, 1972, Your Honor, a Mr. John Abrial was assaulted by Mr. Mazza and Mr. Mazza placed a lighted cigar or cigarette in Mr. Abrial's nose. Mr. Abrial has decided to testify on that issue.

THE COURT: I preclude you from that.

MR. WELCH: At this time may I withdraw our proposed instructions on entrapment.

THE COURT: Yes. I don't know that you needed it in the first place.

MR. WELCH: At this time the government has nothing further.

THE COURT: All right.

MR. BRINDISI: In our summations, do we go in the reverse order of the indictment?

THE COURT: I think you should go in the order that they are named in the indictment. That is the way we usually proceed. Decide among yourselves. I don't care if you want to go the other way. I don't care.

MR. BRINDISI: We decided to go the other way.

THE COURT: Have you all agreed on it?

MR. BRINDISI: Yes.

THE COURT: All right. Return the jury, and, Mr. Welch, when the jury returns, rest, so that they know.

MR. WELCH: Yes Your Honor.

(At this point the jury was returned to the court room where the following took place.)

THE COURT: All right, proceed.

MR. WELCH: The United States has no further witnesses, Your Honor, and at this time rest.

THE COURT: All right, sum up.

MR. LONGERETTA: If Your Honor please, ladies and gentlemen of the jury. The evidence in this matter has come to a close. The case is finally ending. And this is my opportunity to speak to you concerning the defendant Carl Mazza.

When all the attorneys have made their closing statements, the judge will instruct you as to what rules you are to apply to this case. Then you will return to your room and deliberate on the charges of the guilt or innocence of Carl Mazza.

Now Carl Mazza has been charged in this

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realize that.

Treat Mr. Talerico in the fashion that you would expect to be treated if you were sitting there and he was sitting here. I place him in your hands, and I ask you, I implore you, send him down a free man.

Thank you.

MR. BRINDISI: Your Honor, the court.

THE COURT: Mr. Brindisi.

MR. BRINDISI: Ladies and gentlemen of the jury, I think first of all I would like to thank each and every one of you for listening to all the evidence that has been produced during the course of this trial, and for being so attentive to everything that has occurred throughout the last seven days.

Now you have been selected as a jury and you are not only here because it is your civic duty, but you are here to disperse adjustment. You are here in a temple of justice and you are the ministers of that justice. And only you and you alone can bring back a verdict in this case, a verdict, and word verdict means to tell the truth, which is something that you and only you can consider after hearing all the evidence, after listening to all the summations of counsel, and after taking the law as given to you by the court.

I always tell a jury that I don't want them to bring back a verdict because of sympathy, prejudice and misunderstanding. I tell the jury that I want them to come back with the right verdict for the right reason. I want this to be a logical, reasonable verdict. I want you to come back with a verdict of not guilty on behalf of Louis Charles King, Jr., to each and every count in this indictment.

Now along with being the ministers of justice in this case, you will notice that there is one seat vacant at the counsel table and you have been involved in a story that has taken place, a novel that has been written by the testimony of witnesses during the course of this trial, but the ending to that novel only you and you alone can make. And since Louis Charles King, Jr., can't be here to listen to the summations of counsel and you take the law as given to you by the court, I ask you to do me a favor. I ask you to take the place of Louis Charles King, Jr., and sit here and judge this case as you would want it judged if he really were here.

You have been instructed not to speculate as to what has been happening throughout the course of this trial. You have been sequestered and placed in isolation. You have been instructed that you are not to speculate about this at all. You have been in the custody of United States Marshals, and you have been instructed not to speculate about this at all. You have seen security being placed all over this court house and you have been asked not to speculate about this at all. And you have gone to a hospital this morning and seen a man in a bed who testified, and the judge instructed you on that. Suffice it to say that he was injured over the weekend and you are not to speculate about this at all. I cannot believe that you people can really do that unless you take away your mentalabilities completely. You are asked to sit here---

THE COURT: Mr. Brindisi, you are out of order. Sum up.

Excerpts from Summation of Mr. Brindisi (King's Attorney).

MR. BRINDISI: I apologize Your Honor.

THE COURT: Sum up.

MR. BRINDISI: You are not to speculate or conjecture or wonder about the guilt or innocence of these defendants, and I must also say that I stand here only for the defendant Louis Charles King, Jr. The judge will instruct you that you are to consider each of the defendants separately and distinctly and apply that evidence to that defendant that applies to that defendant.

THE COURT: Mr. Brindisi, please let me instruct them. Don't you know what the function of summing up is?

MR. BRINDISI: I am trying to Your Honor.

THE COURT: Leave the law to the court. I told you any number of times.

MR. BRINDISI: I think it is important ladies and gentlemen that you place yourselves in the position that I asked you to place yourself in and think of this case with the mind of Louis Charles King, Jr. Take yourselves back to that period of time prior to August 1972 when Mr. Sackman advised you that he became an informer for the Federal

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the evidence. You will deliberate. Does Mr. Sackman's ring true? What about the defendants' story. They are all under indictment and on trial, and what do you expect them to say? And finally listen to those tape recordings. They don't lie. Judge very fairly. Apply His Honor's law to those facts, the facts as I have asked you to conclude when we look at these terrible acts of violence, and return a verdict that will protect Mr. Sackman. One defense attorney spoke about somebody's family. What about Mr. Sackman's family? What about that man whose life was threatened? All for the repayment of money.

We ask you to return a verdict of guilty as to Mr. King, Mr. Talerico, Mr. Zogby and Mr. Mazza of guilty as charged on each count.

Thank you.

THE COURT: All right, we will recess now until tomorrow morning at 10:00 o'clock. Don't talk about the case; don't let anybody talk to you about it. Don't listen to anything on the radio or listen to anything on the news cast about anything. It is particularly important that you carefully heed my instructions, as I know you have up to this point, and tomorrow morning you will be instructed on the law. It is too late tonight. It is 5:00 o'clock and you had a long hard day.

Tomorrow morning at 10:00 o'clock the court will instruct you on the law. Don't discuss the case even amongst yourselves. Wait until you have heard my instructions, then you can discuss it all you want.

Goodnight.

(Whereupon at 5:00 o'clock P.M., an adjournment was taken to February 28, 1973, at 10:00 A.M.)

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Proceedings, dated Feb. 28, 1973.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LOUIS CHARLES KING, ALBERT J. MARRONE, JAMES VINCENT TALERICO, JACK ZOGBY and CARL J. MAZZA,

Defendants.

CR. NO. 72-CR-283

The trial in the above-entitled matter was had pursuant to notice at the United States District Court in and for the Northern District of New York, at Utica, New York, commencing on February 28th, 1973, before HON. LLOYD F. MAC MAHON, United States District Judge sitting by designation, and a Jury.

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to guard the jury).

THE CLERK: The jury may now retire to consider their verdict.

(Whereupon at 11:45 A.M. o'clock, the jury retired to start their deliberations).

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THE COURT: All spectators will be required to leave the third floor of the building and not come above the first floor during the jury's deliberations. You will file out in a few moments. The clerk will tell you when. You may return at the time of the jury's verdict.

THE CLERK: All spectators may now leave the court room.

(At this point a short recess was taken and the following took place in the court's chambers at 12:05 P.M.)

THE COURT: I have a note from the jury, "Can we have the transcripts of the tapes." I know they are not in evidence, and they were received only as visual aids of the recordings, so I would suggest that I write I am sorry they are not in evidence. If you wish any of the records replayed you may have them.

Mark that Court's Exhibit 1.

(Note marked as Court's Exhibit Number 1).

THE COURT: Let me have a clean piece of paper. I will have my secretary type it.

MR. MANGANELLI: Your Honor, before you

conclude, may I ask you about the matter of lunch. Do you suggest we stay until some particular hour while the jury is having lunch?

THE COURT: The jury will probably be having lunch at 1:00. I think it better for you to wait until 1:00.

MR. MANGANELLI: All right.

THE COURT: I will be having lunch at 1:00 too.

MR. MANGANELLI: All right.

THE COURT: Make it as short as you can. Because you never know. I will have this typed and sent in.

MR. MANGANELLI: Thank you very much.

(Whereupon a luncheon recess was taken at 1:00 o'clock P.M.)

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AFTERNOON SESSION

APPEARANCES: Same as morning session.

(The following took place in chambers at 2:25 P.M. O'clock).

THE COURT: I have another note from the jury. "May we have all the F.B.I. memorandums to Albany, all F.B.I. statements in evidence concerning September 18, 1972 loaned to J. S. Sackman." I don't know of any F.B.I. memos.

MR. BRINDISI: I think the only thing referred to was the memorandums on which I asked questions.

THE COURT: They were not in evidence.

MR. MANGANELLI: They were marked but not introduced in evidence.

THE COURT: Again I will write, "Sorry. No such memorandums were in evidence." Is that agreeable?

MR. BRINDISI: I think the answers to the questions are in evidence.

THE COURT: But they are asking for the memoranda.

THE CLERK: Here is another note, Your Honor.

THE COURT: They want the first account

read again. I will answer the other. Let's go out.

(The following took place in open court with all attorneys and defendants present).

THE COURT: I have two notes from the jury. "May we have all the taped memos to Albany from the F.B.I., submitted in evidence concerning September 18, 1972 loaned to J. S. Sackman." I think we all agree there are no such memos in evidence.

MR. BRINDISI: The only thing I request is that the questions and answers regarding the memo be told the jury.

THE COURT: The memos are not in evidence. Mr. Brindisi, if you can show me any memo in evidence, I will be glad to hear you, but nothing else.

MR. BRINDISI: All I can request the court to do is to advise the jury the memos are not in evidence but the questions relating to the memos are in evidence.

THE COURT: And the other is, "Will you please have the charge read from the first count." Bring in the jury.

(At this point the jury was returned to

to the court room where the following occurred

THE COURT: I have both of your notes. They're are no memos of the F.B.I. sent to Albany or anywhere in evidence. Mr. Brindisi did ask a few questions on cross-exaination based on those memos, based on some memos, and if you wish those questions re-read, we will have to find them in the transcript and have them read to you. If you want those questions and answers advise the court with another note. Now I will have the response to the second note on the charge re-read to you on Count 1.

(The court reporter repeated that part of the court's charge requested as follows:

"Now Count 1 of the indictment is based upon a law which in pertinent part provides that whoever makes any extortionate extension of credit shall be guilty of a crime. For our purpose in this case, an extension of credit simply means that a loan was made. Nothing more complicated than that.

In order to convict the defendant Louis Charles King on Count 1, the government must prove to your satisfaction beyond a reasonable ment has failed to prove to your satisfaction beyond a reasonable doubt each of the three elements of the crime charged in Count 1, that is (1) that on or about September 18, 1972, the defendant King made a loan to Sackman; (2) that the loan was extortionate in nature, and (3) that the defendant King acted knowingly and intentionally, or that the government has failed to prove beyond a reasonable doubt that the defendant King aided and abetted another person in the commission of the crime charged in Count 1, you must acquit the defendant King on that count.

On the other hand, if you find that the government has proved to your satisfaction beyond a reasonable doubt all three elements of the crime charged in Count 1, as I have given them to you, or that the defendant King knowingly aided and abetted another in the commission of the crime charged in Count 1, you should convict the defendant King on Count 1.")

THE COURT: All right, you may retire now to your deliberations.

(Whereupon at 2:45 P.M., the jury retired from the court room to continue their deliberations).

THE CLERK: Court stands in recess until the jury returns with a verdict and the spectators are asked to return downstairs and not to get above the first floor.

(At 5:50 P.M. o'clock the following took place in chambers with all attorneys present).

THE COURT: I have a note which says, "May we please hear all the tapes". It takes them a little while to set it up, so I am going to suggest that they go out to dinner at this time and then come back and hear the tapes. Why don't you plan to be back here at 7:00 o'clock.

MR. BRINDISI: Thank you Your Honor.

THE COURT: They may not agree to that course and again they may want to hear them now. Let's sit down and I will send them a note. "Yes. Do you want to hear them now or wait until after dinner?" All right.

MR. MANGANELLI: Sure.

(At this point a note was taken into the jury after which it was returned to the court).

THE COURT: They write, "After dinner. Thank you."

(Whereupon at this point a recess was taken to 8:10 P.M., when the following took place in the court's chambers).

MR. BRINDISI: I have a question of whether or not the transcripts would be used as visual aids to the jury since they are not in evidence?

THE COURT: I would think so. They are just as they were before. They are aids to the jury. Mr. Clerk, would you make them available.

(The following took place in open court with all counsel and defendants present).

THE COURT: Bring in the jury.

(At this point the jury was brought into the court room).

THE COURT: Will counsel come up a minute please.

(The following took place at the bench between the court and counsel outside the hearing of the jury).

THE COURT: They are going to read these transcripts anyway as we go along. We may save a lot of time here if you let them have the transcripts. They have already seen them and we would just be sitting here listening to them all over again, but if you wish we will do it the hard way. You have a right to the hard way.

MR. LONGERETTA: May we confer with our clients about it?

THE COURT: Sure. Confer with your clients about it.

(At this point discussion was had between defense counsel and their clients).

MR. BRINDISI: I think we have agreed to save time of the court and the jury to let the transcripts go in.

THE COURT: I would like you all to look them over before they go in.

MR. BRINDISI: The ones that the jury has before them.

THE COURT: Yes.

(The following took place in open court).

THE COURT: Counsel have agreed with their clients' consent to save your time and not have you sit there to let you have those redacted transcripts that you have. Will you return them so the lawyers can make sure that they are all right. It is your right to hear the recordings if you want to, but it would be easier if you read the transcripts, but it is up to you. Return them first to the clerk and make sure they are correct.

(An inspection was made of the transcripts by defense counsel).

MR. MANGANELLI: This is satisfactory.

THE COURT: Review them and send them in as soon as you have checked them.

(At this point a short recess was taken after which the following occurred at 8:25 P.M. in open court where all defense counsel and the defendants were present, except the jury).

MR. LONGERETTA: If Your Honor please, we apologize for this, but this is an afterthought. We were wondering if we might have the jurors have the transcripts for a specific period of time rather than remaining in there during their entire deliberations. Let's say restrict them to a half hour.

THE COURT: I think that is a reasonable suggestion. Why don't we put it this way, "How long do you think it would take to read them? An hour?"

MR. MANGANELLI: I would say so.

THE COURT: Why don't I let it go for an hour. It is now 8:25. Let's say 9:30.

MR. BRINDISI: Fine.

THE COURT: At 9:30 call them out and ask them if they have finished the transcripts and then have them placed in the clerk or the marshal's care. How is that?

MR. BRINDISI: That is fine.

MR. LONGERETTA: Thank you Your Honor.

MR. SCHOLL: All right.

(The following took place in open court at 9:40 P.M. o'clock with all attorneys and defendants present except the defendant King).

THE COURT: Bring in the jury please.

(At this point the jury was returned to the court room).

THE COURT: Madam forelady, will you raise your hand if you finished reading the transcripts?

JUROR #1: No.

THE COURT: You have not finished reading them?

JUROR #1: No.

THE COURT: Would you advise the court with a note when you have finished reading them and return them to us. We would just like you to read them once and that is it, and then we will adjourn for the night and you will resume your deliberations in the morning. But we would like you to finish reading the transcripts now if you would.

JUROR #1: Thank you sir.

THE CLERK: Court stands in recess.

(At this point a recess was taken until 10:30 P.M. o'clock of which the following occurred in open court with all attorneys and defendants, except Defendant King, present).

THE COURT: I have a note to return the transcripts. I will call the jury in in a minute and excuse them for the night without taking the time to bring up the spectators.

MR. MANGANELLI: Yes, Your Honor.

MR. WELCH: Yes, Your Honor.

MR. BRINDISI: Yes, Your Honor.

THE COURT: I will ask the spectators. We won't take time to have the spectators up here.

Have each of you explained to your clients what the proceedings are going to be?

MR. MANGANELLI: Yes, Your Honor.

THE COURT: Is it agreeable to all clients?

MR. LONGERETTA: Yes.

MR. SCHOLL: Yes sir.

THE COURT: All right, call in the jury.

(At this point the jury was returned to the court room).

THE COURT: I know you are tired. This has been a long day. You have had a hard day's work and so we will adjourn now until tomorrow morning at 10:00 o'clock. Don't talk about the case once you leave the court house. See if you could get a good night's rest and come back and work on it tomorrow. Don't let anybody talk to you about it. Be particularly careful not to read any papers or listen to any television or newcasts on the radio. I know all of you have been very careful to obey those instructions, and will each passing day it becomes more and more important.

Good night.

THE JURORS: Good night.

Adjournment.

THE COURT: Adjourned to tomorrow at 10:00 o'clock.

(Whereupon at 10:35 P.M. o'clock a recess was taken until March 1, 1973 at 10:00 A.M.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

CR. NO. 72-CR-283

LOUIS CHARLES KING, ALBERT J. MARRONE,
JAMES VINCENT TALERICO, JACK ZOGBY
and CARL MAZZA,

Defendants.

The trial in the above-entitled matter continued pursuant to adjournment at the United States District Court in and for the Northern District of New York, at Utica, New York, on March 1, 1973, at 10:00 o'clock A.M., before HON. LLOYD F. MAC MAHON, United States District Judge sitting by designation, and a Jury.

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APPEARANCES:

HON. JAMES M. SULLIVAN, JR., United States Attorney for the Northern District of New York, Federal Building, Syracuse, New York, By: EUGENE WELCH, ESQ., Of Counsel, appearing in behalf of the United States;

-and-

LOUIS T. BRINDISI, ESQ., Attorney and Counsellor at Law, 747 Bleecker Street, Utica, New York, appearing in behalf of Defendant King; and

JOSEPH MANGANELLI, ESQ., Attorney and Counsellor at Law, First National Bank Building, Utica, New York, appearing in behalf of Defendant Talerico; and

JOHN C. SCHOLL, ESQ., Attorney and Counsellor at Law, First National Bank Building, Utica, New York, Assigned Counsel in behalf of Defendant Zogby; and

JOHN LONGERETTA, ESQ., Attorney and Counsellor at Law, 23 Hooper Street, Utica, New York, appearing in behalf of Defendant Mazza.

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(The following proceedings took place in chambers at 11:15 A.M. All attorneys were present).

THE COURT: The jury wants to hear the recording of November 11th between King and Sackman and I have a redacted transcript here. We can save ten minutes if we omit the opening statement which is, "My name is J. Schuyler Sackman. Today is November the 11th, 1972" when we play the recording. Is that alright with all of you?

MR. BRINDISI: Yes, Your Honor.

MR. MANGANELLI: Yes, Your Honor.

MR. SCHOLL: Yes sir.

MR. LONGERETTA: Yes.

THE COURT: All right, we will go out and proceed.

(The following took place in open court at 11:20 A.M., with all attorneys and all defendants, except Defendant King, present).

THE COURT: As I explained to you, I have a note from the jury. They want to hear the tape between Mr. King and Mr. Sackman on November 11, 1972. Proceed. Bring the jury in.

(At this point the jury was returned to the court room where the following took place).

THE COURT: Good morning. I have your note. We will proceed. We will begin on the second page. It will save ten minutes. The first line there is just, "My name is J. Schuyler Sackman", and then we have a long lapse and everybody has agreed to omit that, and we will start on the second page. All right.

JUROR #11: I have the November 16th.

THE COURT: You should have the other one. Go ahead.

(Jury listens to tape Exhibit 8, as follows:

"JS: You know that I'm still waitin for the call, and the call hasn't come in. Now I got a problem. I gotta get a thousand dollars for your tomorrow. I mean Monday. I made an agreement to get it, you know, for those two fellas. And I haven't got all of it.

LK: Yeah.

JS: When my mother was in Florida last week, she bought a condominium down there and he put a six thousand dollar down payment on it. I got some money that's committed to me. You know, he calls me last night, I was out trying to arrange the money visting with different people. I've been chasin around like a fuckin idiot. Cuz I know the pressure is on.

LK: Yeah.

JS: And I told him, you know, he calls the house and he speaks to Lois, Lois says that he wants to see ya tomorrow morning. I had a ten o'clock appointment this morning.

LK: Umm hmm.

JS: Got an ashtray?

LK: Yeah, right here.

JS: I want to kill it; so I told him that, ah, that I cannot, you know, be down this way, he says no, he says one o'clock is when we're gonna meet. I says O.K., one o'clock, we'll meet at one o'clock. I says then I can go to my ten o'clock appointment and I won't have any problem. So I went to the ten o'clock appointment and I'm gonna have some money Monday. I don't expect to have the whole thing, that's my only problem. Can you get me more time with them? I mean I'll come in

Monday with it.

LK: They want it by the eighteenth of this month they want it all back. They told ya that. That ain't too far away you know. What is today anyways? Today's only, today's the twelfth. By the eighteenth they wanted it all back.

JS: O.K., so the eighteenth is, ah, a week from, ah, oh, no, it's Saturday.

LK: That's the eighteenth. That's what it falls on.

JS: It falls on a Saturday, the eighteenth.

LK: The eighteenth falls on a Saturday.

JS: That's right.

LK: A week from today then.

JS: Week from today. Well, the, the, the main thing is I gotta get you some money so they see good faith.

LK: (Mumbles) I don't know what you're going to do.

JS: Will they go for just vig for a while?

LK: Hmm?

JS: Will they go for just vig for a while?

LK: I don't know. I gotta talk to em. I, ah, I ain't saying any more since that night.

JS: I'm nervous about it Lou.

LK: You got a right to be, I'll tell you something your personal problems your, personal reasons, you know what I mean, wasn't like no deal didn't go thru or somethin, I mean you took care of your obligations home and all that stuff you can't part with money like that. You just can't do things like that.

JS: I'm gonna pay em.

LK: Yea, well, you're gonna, but the idea is ya didn't.

JS: Right.

LK: It's a very serious, serious thing.

JS: Well, I didn't like lookin down a gun.

LK: Yeah, I know.

JS: That's the first time I ever did that. I'll be honest with ya, I was very, very uncomfortable, which is I suppose, what it was meant to do.

LK: Well, you got to do something. Whatever you got to do.

JS: All right. Where do you want me to meet you.

JS: ...... I got shylocked, I let myself get shylocked.

LK: You got you own personal reasons, you know. I mean, you took care of your own obligations, UNT. You got serious problems now.

JS: Right. But I was also supposed to be able to move wasn't I.

LK: Well UNT...

JS: Wasn't that Al's idea?

LK: UNT...told ya don't depend it. UNT. How you gonna get it back. You gonna get it from your father. Well, what did I tell you. Don't depend on any of these deals to go through because there isn't any.

JS: O.K., O.K., all right. I understand what the picture is. As soon as this thing comes off...

LK: The first thing for you to do UNT. This is serious problem. UNT...get that four thousand dollars back to him. Then you can talk to him on, on the juice. Otherwise, you got serious problems, I mean it I don't think they'll talk to you anymore. I seriously don't. Between you and I you got very serious problems with these people you know it or not because Al told them, I told them don't worry about it. I said this guy here is going to get it from his father, if worse came to worse UNT. I think the best thing to do is pay them their money back. Then you talk to them if you want on the juice. Without bringing them the initial amount back, your making a fool out of them.

JS: O.K. All right.

LK: I don't know what else to tell ya.

JS: Where do you want me to meet ya Monday?

LK: Meet me down the garage.

JS: O.K.

LK: Ya know.

JS: Yeah. 11:30.

LK: UNT.

JS: All right.

LK: UNT. slightest idea, UNT.

JS: Well, I'll tell ya, I'm, I'm just tired of the whole thing.

JS: ...Well, I've been looking to you

for guidance.

JS: ...Right, eleven thirty?

LK: But if I were you, I'd have that fuckin money tomorrow. Don't cause any aggravation for me.

JS: Lou, I'll lay it...

LK: I'll tell ya, you're on the fuckin juice now. You don't know what I mean not gonna play fuckin games with ya.

JS: I understand.

LK: That's too serious of a fuckin problem. You took their money, bring it back, that's all they want.

JS: All right, but all I'm gonna be able to have is a part of the a, part of the juice, that's what I promised.

LK: You promised a thousand dollars Monday.

JS: Yeah. I don't even know if I'll have the whole thousand dollars I'm laying it on the line. I'll do the best I can to get as much as I can.

LK: Today is, today is what? Twelfth?

JS: Yeah.

LK: You got thirteenth, fourteenth, UNT, and the eighteenth is Saturday.

JS: That's right.

LK: Whatta ya gonna do by the eighteenth then?

JS: I don't know, I'm workin. What can I do, I'm gonna work on it. The six grand that I knew was gonna be available I know what they spent for the down payment on that condominium, so I'm gonna have to work on it myself. But I'll get some ju...I'll get some of the, of the juice money and then it's just gonna have to be paid, that's their business isn't it? That's their business isn't it?

LK: Yeah, I guess so.

JS: They gotta have it out to somebody, it might just as well be sittin out to me at the moment.

LK: All right, we'll see what happens tomorrow.

JS: All right.

LK: All right, I'll see ya later, Sky.

JS: Thanks for your help. I'll see ya in the morning.

LK: Yep.

JS: Well, that's UNT.

LK: Huh?

JS: Well, that's UNT. about getting this thing oing UNT, no excuses UNT or something like that.

LK: All you need is, ah, UNT call him back at six.

JS: I'll call em anyway, I wanna tell Jimmy I'm gonna call later. I'll call at seven. UNT thank.

LK: UNT.")

THE COURT: All right, you may resume your deliberation. Leave the transcripts there in the chairs, please.

(Whereupon at 12 o'clock noon the jury retired).

THE CLERK: The court stands in recess. The spectators will please go downstairs.

(Whereupon at this point a recess was taken to 12:15 P.M., when the following occurred in court with all counsel and all defendants except the defendant F[illegible]g being present).

THE COURT: Bring in the jury.

(At this point the jury was returned to the court room).

THE COURT: Proceed.

THE CLERK: Ladies and gentlemen, have you agreed upon a verdict, if so, how do you find and who shall say for you?

JUROR #1: We find the defendants guilty, Your Honor.

THE COURT: On all counts as charged?

JUROR #1: Yes sir.

THE COURT: As to each defendant?

JUROR #1: As to each defendant.

THE CLERK: Harken to your verdict ladies and gentlemen of the jury as the court has recorded it, you say you find them guilty on all counts and so say you all?

THE JURORS: We do.

THE COURT: I want to thank you for the very careful attention that I know you have given to this case; to the very careful attention you have paid to the court's instructions, and I want to caution you again not to talk about this case. If anybody tries to talk to you, with you, you are to contact the F.B.I. immediately.

Now you are all adults and this is a serious matter and if anybody tries to contact you about this case call the F.B.I. immediately. You are excused.

(At this point the jury retired from the court room).

THE CLERK: Court will remain in session.

MR. MANGANELLI: If Your Honor please, at this time would it be proper to make the appropriate motions?

THE COURT: Yes.

MR. MANGANELLI: Then I will defer to Mr. Brindisi.

MR. BRINDISI: On behalf of the defendant King, may we have an opportunity to file motions for judgment of acquittal. I woul like to do it in writing and submit it to the court.

THE COURT: I prefer you do it now Mr. Brindisi, if you can at all. I am sure you are well aware of what your motions are. You are also aware that this court is a visiting judge here and I prefer you to make these motions now.

MR. BRINDISI: I would like an opportunity to look at some law to supply to the court on my motion.

THE COURT: You can supply me that later. Let me hear what your motions are now. There are many law books out here so I think either today or tomorrow you can give me the law.

MR. BRINDISI: Basically speaking the motion for judgment of acquittal will be coupled with a motion for a new trial, and the grounds for the new trial will be the conduct of the trial during the absence of the defendant Louis King.

THE COURT: You mean the continuance of the trial?

MR. BRINDISI: The continuance of the trial during the past week in his absence and I feel there is error by the judge not voir diring the jury to determine whether or not the jury did have some notice of the incident which occurred this past weekend. I feel I have to look at some law on voir diring of the jury and the fact the defendant King was not present while the trial continued.

THE COURT: Mr. Brindisi, perhaps it would be better, I see you are not ready, and perhaps it would be better if I heard you at 2 o'clock. That will give you time to get your motion down on paper and organize them so that we can discuss them one at a time calmly and dispassionately and see if there is any merit. And if the rest of you would like to do that it would be alright with me.

MR. LONGERETTA: Yes sir.

THE COURT: If you have any cases you want to cite, just cite them.

MR. BRINDISI: Thank you.

THE COURT: All right.

MR. LONGERETTA: Thank you, Your Honor.

THE COURT: All spectators are to remain until excused by the clerk.

(Whereupon at 12:20 P.M., all spectators were excused from the court whereupon a recess was taken until 2 o'clock P.M., of the same day).

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AFTERNOON SESSION

APPEARANCES: Same as morning session.

(At 3:00 P.M. o'clock the following occurred in open court with all attorneys and defendants present, except the defendant King).

THE COURT: All right Mr. Brindisi.

MR. BRINDISI: Your Honor, if the court please, at this time on behalf of the defendant, Louis Charles King, I would like to make a motion for a judgment of acquittal and join with it a motion for a new trial. And in support of our motion I wish to indicate to the court what I think are some of the errors that might have been committed during the course of the trial.

Number 1 we feel that the motion for a mistrial after the defendant King was shot and hospitalized should have been granted and that the trial should not have continued since the defendant King was not present during the remainder of the trial.

We feel there was error in the court's refusal to conduct a voir dire of the jury to determine whether or not they have any indications of the events which took place regarding the defendant King and his alleged attempt to assault a government agent, which was highly publicized in the newspapers in this area.

We feel there was error in denying our motion to continue the trial in the defense of the defendant King either at the hospital or other suitable places which the court could have set up.

We feel there was error in getting the defendant's King permission or waiver in writing to continue with the trial during his absence.

And we also feel there was error in denying our offer of proof and not allowing us to show the somewhat criminal business activities of the informer, Sackman, although he had no prior criminal record, and that this could have attacked his credibility.

Also in refusing to grant our motion of dismissal in the indictment on the grounds that an informer working with the government learned the defense of the defendants and conveyed that defense to the United States

Attorney's Office.

We feel that the court before deciding the issue of voluntariliness, being voluntarily absent during the course of the trial, should also have relied on the presumption of innocence that goes with the defendant in many criminal proceedings. And although there were arguments that he might have committed a crime, we still must rely on the presumption of innocence until he is convicted by a jury of that crime.

THE COURT: Are you finished?

MR. BRINDISI: Yes sir. That is basically my application.

THE COURT: Whether to conduct a voir dire of the jury is always a matter of the court's discretion, and in view of the fact that this court had this jury sequestered, and in view of the fact that they were-- the television was turned off, and no newscasts and that they didn't have cause to hear the broadcast, and for the further reason that sequestering the jury is to shield them from publicity prejudicial to the defendants.

Therefore it could only have been a need-less waste of the court's time and put further delay on this trial under circumstances where safety was paramount, and in the interest of the jury's safety and the interest of the safety of the court and the witnesses and even defense counsel, and some of the defendants.

So I denied that motion in the exercise of my discretion, and it was wholly unnecessary and useless under the circumstances to conduct such a voir dire.

As for your motion to continue the trial at the hospital, that, as I ruled at the time, was not practical under the circumstances. There simply were no facilities there to adequately secure the defendants, to adequately secure the jury, there was no even a room where the jury could deliberate, and with the other problems, and it was not a place designed to conduct a court. More than that the Doctor told me, or testified, the attending physician testified that King could not testify under the strain for more than periods of about an hour. This would if anything have meant constant interruption of the trial every hour whether or not he was testifying and would have served no purpose in any event in conducting the balance of the trial in the hospital. That again was discretionary and in view of the continuing the trial in his absence, I think the court gave him more than he was entitled to. We went out and heard his testimony. So I deny that motion.

In regard to your contention that there was no written waiver, it is still settled in Illinois v. Allen, United States vs. Tortora, in the Second Circuit, that the defendants can waive their right to be present at the trial by their own misconduct, so therefore no written waiver is necessary.

On your offer to prove Sackman's bad reputation, on your own statement, that would have failed to show that any such misconduct ever resulted in any criminal conviction of any kind. Cases in the Second Circuit, one of which I showed you, Mr. Brindisi-- I have forgotten the name of it-- make it perfectly plain. As for the alleged error in refusal to grant dismissal of the allegations because there was a spy in the camp, the court conducted an extensive hearing, and as I indicated at the conclusion of that hearing in two prior cases, to wit, the Copeland and Caldwell cases, those motions have been made post trial, as you are now making this one. It would have been impossible really for the court to rule on that motion at that time, and once again I had to wait to see what developed at the trial. And at the trial the court is now in a position to state that the defense assumed, argued that the Federal Bureau of Investigation had an informer in the camp of the defense in the guise of a defendant, Marrone specifically, it is perfectly plain to the court that Marrone furnished the government with absolutely nothing of any value whatsoever.

To be more specific there was evidence that the defendants plan to murder the complaining witness, assault federal agents, attempt to bribe a judge, attempt to bribe jurors, and to suborn perjury and furnish other witnesses, all of these were plainly illegal criminal acts which not only lack probative value in this trial but would interfere with the administration of justice and would obstruct this trial. It therefore was the clear duty of the F.B.I., to avail themselves of that information for the legitimate purpose of preventing destruction of justice in ferriting out the commission of crimes.

Insofar as it disclosed the strategy on the part of the defendants to impeach the testimony of Sackman by showing bad conduct not resulting in criminal acts, it plainly was inadmissible.

You recall Mr. Brindisi you were to some lengths in your questions to establish what you were going to do. It was plain to the court then and surely is now having had an offer of proof made by you at the opening of trial plus those on the record at the judicial hearing, that your strategy in impeaching the government witness was not novel, whereas it was not even admissible or probative of any evidence in any way.

Insofar as Mazza's defense goes, after all it was Marrone who made the loan and he was trying to help out Marrone's wife. It really wasn't any defense, and actually it was no defense even on Marrone's testimony and knowledge of it could not in any way have aided the government or impeded the defense since the defense was immaterial. On the contrary it was the admission of a crime. In short anything learned, by having an informer in the defense camp was totally useless, not only to the prosecution but to the defense as well, and therefore could not have been or resulted in a failure of any constitutional right to effective representation by counsel. And for those reasons, and I am not sure but there are many others that could be elaborated upon if the court had the transcript and the time to study it, which would in any way alter my opinion about it and my conclusion about it. So upon all the things that were brought out, the facts and circumstances brought out at the trial, the court can state conclusively that there is no merit whatsoever in that motion.

Now as for your motion for a mistrial or for a severance when King was shot, what do you have to say to that?

MR. WELCH: Your Honor, Mr. King was in fact shot in a voluntary act, committing a crime. As to any ground for mistrial, Your Honor, we fail to see it, and Your Honor has experienced this trial with the rest of us and if anything the result of Mr. King's testifying in the hospital would create sympathy for Mr. King rather than accruing to any other defendant. Finally Your Honor did accomodate Mr. Brindisi's request and Mr. King had an opportunity to present his case.

THE COURT: You see this was Mr. King's voluntary act. His presence at the home of Agent Kelly, isn't that his own voluntary act?

MR. BRINDISI: I can't elaborate on it. I can only indicate to the court that there is a presumption of innocence.

THE COURT: I am asking you if his presence at the home of Agent Kelly on Saturday night was a voluntary act.

MR. BRINDISI: I don't believe so Your Honor. I think if the facts were established and an informer was also involved in that situation, and it was a thing that was fully discussed beforehand with the Federal Bureau of Investigation; that the informer led the defendant King to the residence fully knowing that there was no one present in the house at the time, fully knowing that there were federal officers outside the house ready to shoot Mr. King, and having failed to disclose this to Mr. King at that time.

THE COURT: How would that show it was not a voluntary act?

MR. BRINDISI: I feel that the fact was that the government agencies involved entrapped, if nothing else, Mr. King into going to that residence.

THE COURT: That may be the subject of another trial or charges, but the fact he assaulted a federal officer I don't think that it has to do with a question whether his act was voluntary. King, as the newspapers report, which is all I know about this, and what you and Mr. Welch have said on the record, plus what the clerk advised the court on a Saturday night, and that is that King was seen at the home of Agent Kelly entering an automobile; that he left the car and threw, walked onto the lawn and threw a grenade into the window and when they tried to apprehend him he got back in the car and fled away. Are those the facts or aren't they?

MR. BRINDISI: I really don't think those are the facts.

THE COURT: Then we will have to conduct a hearing to find out what the facts are.

I want someone, Mr. Welch, to testify what was observed what happened at the home of Agent Kelly on Saturday night, who saw what King did at that time. And also someone who can testify as to what if anything King did at the Ramada Inn.

We will take a short recess and you advise the court as to when you have a witness.

MR. WELCH: Yes Your Honor.

THE COURT: Before you get to that, do any of the defendants have any other motions?

MR. BRINDISI: I have one other request.

THE COURT: Brindisi, I asked you if you finished all your motions. Don't you understand English or don't I speak it?

MR. BRINDISI: You do Your Honor, but with your direction to the United States Attorney to conduct a hearing, to get a witness, I would ask that he also be directed to furnish any evidence that might exculpate the defendant King, and also if any informers were used in this instance.

THE COURT: We will cross that bridge when we come to it. I am not conducting a crime trial. I am trying to find out if there were any facts for continuing this trial without King. I am not involved with whether King was guilty or not.

MR. BRINDISI: I think this procedure now is in error. It should have been done prior to the continuance of the trial.

THE COURT: It would have been foolhardy to delay this trial for a hearing in the middle of it, under the circumstances of this case where I passed on all of the objections that were made in this record, which was long before King ever did any act with which he is alleged to have done. I will hold a hearing after we see whether there are any other motions.

MR. MANGANELLI: On behalf of the defendant James Talerico, I again at this time pursuant to Rule 29, renew my motion for judgment of acquittal on the previous grounds stated, to wit, in substance that the government failed to prove a prima facie case as a matter of law against this defendant.

In the alternative I move under Law 33 for a new trial, principally on the grounds contained therein having to do with interest of justice. It appears to me, Your Honor, that the evidence adduced in the People's case and the defendant's case indicate that the verdict of the jury as pertaining to Mr. Talerico was against the weight of the credible evidence. I call Your Honor's attention to the degree of cross-examination, the probative facts that were brought out by Mr. Welch in his cross-examination.

THE COURT: No facts were brought out on any cross-examination.

MR. MANGANELLI: And I urge Your Honor to consider in the interest of justice as far as Mr. Talerico was concerned, and on that basis the verdict was contrary to the weight of the evidence.

THE COURT: There was plainly evidence

in the record from which a reasonable man could reasonably conclude Talerico was guilty.

MR. MANGANELLI: Your Honor, I think as far as interest of justice, I appreciate Your Honor's remarks concerning the evidence of the past weekend, but I am constrained to state that this evidence and the subsequent methods taken in regard to the conduct of trial in my opinion have prejudiced the defendant Talerico. Nothing has been adduced nor anything suggested that Talerico was any part of any violence, or alleged violent act that Mr. King performed, because of this unfortunate event, I feel Mr. Talerico has been caused to suffer from an alleged act of someone else. The prejudice is that the atmosphere and the conduct of this trial changed tremendously from last Friday to Monday. The mere presence of many many more deputy marshals, law enforcement officers in the court room and in close proximity of the jury could have had a direct bearing upon their deliberation. Sometimes, Your Honor, conjecture can be more dangerous than actual knowledge, so that I urge the court to consider this argument in the interest of justice and to set aside this verdict because of it and direct a new trial.

I would also like at this time, without repeating all of the other grounds, I would like to set forth in substance the other grounds which I feel were error, respectfully. The one ground I would like to urge is that Your Honor in an attempt to explain the presence of Mr. King at the hospital indicated in substance, "Suffice it to say he was injured". There again possibly a wrong or prejudicial interpretation could have been taken from that remark by the jury. And in view of the unusual circumstances which I am well aware of, which none of us had anything to do with, were present here, so I suggest that that could have been prejudicial.

I further for the record would like to state that it was error by Your Honor to refuse the defendant's request to inquire if any of the jury, at least of the marshals or people in whose custody the jury was, or any of the persons, who may have come in contact with the jury wherever they were housed, or any employees of the place where they were housed. I can see if Your Honor please failing in regard to actual interrogation of the jurors themselves, but I would like to urge the argument that it was error of the court not to conduct such hearing.

It is for the above reasons that I respectfully move for a new trial.

I would like to urge one other motion to Your Honor, which has nothing to do with a new trial, but a renewal of bail on James Talerico. I again respectfully request Your Honor to reinstate this man pending sentence to bail; that he has on no occasion indicated or done anything, has taken no action verbally or actively which would seem to indicate that he would flee the jurisdiction, or that he would be a danger to any person or officers in this community regardless of who they may be. He has a family here. His record is barren of any wrong doings of any violence. Accordingly, I urge Your Honor to exercise his discretion at this time.

THE COURT: Thank you. There is not the slightest basis other than speculation in anything that you said in support of your argument that the defendant Talerico was denied a fair trial. Or any way prejudiced by any actions of the court to assure the safety of the jury and the completion of this trial.

In light of the circumstances and the events which occurred, and the threats shown on the record and indeed the very evidence on the merits of this case on trial, conversations out of the defendant's own mouth, the court would have been remissed in its duty to have taken one less security measure than it did. Indeed the court may have thought it inadequate under the circumstances. These steps taken to protect the court personnel, witnesses, jurors, all was for the discretion of the court. And it was in the exercise of this discretion that the jury was sequestered. And that was also the reason why there were a large number of marshals in the court throughout this trial. Indeed at one time the defendants moved for a private trial to eliminate the spectators.

In the light of all those facts, I took

the necessary steps to protect the people involved in this trial, all of them, including the defendants.

As to your motion for bail pending sentence, there is no present appeal so I can't consider the motion for bail pending appeal until the appeal is taken. I will treat it as a motion for bail pending sentence and I deny it.

The court is required again to the public interest and to protect the safety of the jury, the court, the witnesses and defense counsel, and the defendants themselves, to revoke bail and remand the defendants to jail. The court has been advised that within a half hour of this jury's verdict, an anonymous telephone call threatening the jury was received by the Federal Bureau of Investigation. The court cannot therefore let any of these defendants out on bail at this time because they are a danger to the community. The evidence in this case shows them to be men of violence and in view of the fact that one of their co-conspirators engaged allegedly, and we will soon find this out, in acts of violence against the resident agent in charge during this trial, that there were numerous threats of violence in this case through criminal acts to obstruct, which the court finds, and now that the defendants are convicted they are not shield by any presumption of innocence, together with the fact that there are possible maximum sentences of prison for twenty years and heavy fines, and for those reasons and the circumstances which are overwhelming, the court would be completely foolish to grant bail pending sentence.

MR. SCHOLL: I respectfully move on behalf of Jack Zogby for judgment of acquittal on the ground the evidence against this defendant was insufficient to sustain a conviction.

I also move respectfully for a new trial based upon similar grounds as advanced by Mr. Brindisi and Mr. Manganelli. I see no reason Your Honor to reiterate them except to say I do make my motion based on similar grounds, with the exception of one additional ground as it affects the defendant Zogby.

I respectfully urge that the court erred in failing to supress the in-court identification of the defendant Zogby because it was based upon an out of court identification that took place of the defendant Zogby.

For those reasons I respectfully move for judgment of acquittal and a new trial.

THE COURT: Your motion is denied for all the reasons I have just enunciated with respect to the other defendants.

MR. LONGERETTA: May it please the court.

THE COURT: Just a moment Mr. Longeretta. And I add to it, there was no evidence of any suggested pre-identification of the defendant Zogby, and there was plenty of evidence which the jury has found that Mr. Zogby attacked the witness in an attempt to collect this loan, with a knife. Adding this to what I said with respect to the other defendants, there is no reason for my not doing this.

MR. LONGERETTA: I naturally join in the motion by other co-counsel and also move that the court set aside the verdict against the defendant Carl J. Mazza. In addition I move for judgment of acquittal for two reasons. Particularly, Your Honor, one being that the verdict was contrary to the weight of the evidence against the defendant Carl Mazza, there being no showing as to how or when Carl Mazza was approached by the witness Sackman, and the testimony of Mazza showed that he was there to help this woman and also that he had no knowledge of the loan made on September 18th, and this was confirmed by Mr. King. Mr. Sackman, of course, his testimony just said he was there and he presumed as to his purpose in being there.

The other reasons being the errors committed on the trial. The court refusing to dismiss the indictment after it was established that an informer was in the camp of the prosecution; the fact that we feel that Carl Mazza did have complete lack of knowledge, did have no knowledge of the loan made on September 18th; that his actions occurred on the one particular day.

The second error that we feel was committed in the course of the trial was a refusal of the court to show the past conduct of Mr. Sackman as indicated by other counsel.

The third error was the court refusing to allow a mistrial after it was disclosed to us that our proposed defense had been disclosed to the prosecution. The defense of Carl Mazza would not have been disclosed on opening statement had this knowledge been furnished to us. We feel Mr. Mazza was compelled by making the statement in camera and the opening statement to the jury, to testify against himself.

The other reason, and this is the only matter in which I intend to add certain facts, is the refusal of the court to conduct a voir dire of the jury after the events occurring on Saturday night. I point out to the court after the event on Saturday night there were certain other events which occurred in this court room. There was a witness who was not able to attend the trial, and the trial was thereafter conducted in the hospital where the court remarked, "Let it suffice to say that the defendant was injured over the weekend." And there was thereafter an increase of security around the jury. The court waived all this aside with the remark, "I will make another statement to the jury. Their sequestration was for this purpose, and the court felt that the purpose of the sequestration was danger.

I submit to the court all these events I just enumerated would cause a reasonable person to sit back and say, "There must be a reason." The addition of the guards and the hospital and remarks can only arouse in each individual juror that same suspicion, same fear would apply not only to the defendant and counsel and the court, but certainly to the jury itself. And we feel the court in refusing to conduct any voir dire so as to give them some explanation, that this was error not to do so.

THE COURT: To conduct a voir dire only would serve to heighten and intensify the very feeling that you say was aroused by the court's failure to do so. As I have already said they were shielded purposely. The purpose has been particularly careful that in no way to mention to anything other than what occurred in court or about any defendants in which would in any way have prejudiced another. A jury would have to be fools not to conclude that a man who is hale and hardy in front of them at 5 o'clock on Friday afternoon and in a hospital the following Monday, they can certainly assume later when we took his testimony at the hospital that he had suffered some injury over the weekend. He was not even able to sit up in a chair and the court felt that without disclosing any violence that the court had to tell him the fact that the man was injured over the weekend.

And as to the defendant Mazza, first of all he has admitted his crime on the stand. His lack of knowledge alone are totally immaterial. His denial was obviously incredible. The jury recognized the criminal intent from all the surrounding circumstances and he admitted on the stand that he did use violence and that King was sitting in the back seat while this was going on. This is too much to ask any jury not to believe it.

MR. LONGERETTA: I take an exception.

MR. BRINDISI: In regards to the hearing that Your Honor has ordered, I can only object to it again on the ground that the defendant is not present and that he should be present at all stages of the proceeding and especially if this is going to enter into a determination of whether or not his absence from the courtroom during the course of the trial was a voluntary one.

I just think that I can't ---

THE COURT: Is the defendant able to be here?

MR. BRINDISI: The defendant is in a hospital.

THE COURT: Is he able to be here?

MR. BRINDISI: The defendant is rational, that is all I can tell the court.

THE COURT: I don't intend to conduct the hearing in the hospital. This is a similar matter that involves the exercise of discretion of the court. I intend to conduct the hearing in camera, and it is not a trial in any sense of the word. He has no constitutional right to be present at this hearing under the circumstances, and if he wishes to present any evidence, we will cross that bridge when we come to it.

Proceed. If you object to a hearing, all we need is a sworn statement that he was there, he left the automobile that morning---

MR. BRINDISI: I can't stipulate that.

THE COURT: I understand that.

MR. BRINDISI: I can't waive his rights.

THE COURT: I have no other way of determining the fact but to conduct a hearing. You are the one that made the motions. You have presented no evidence to the court that his absence Monday morning was not voluntary. The burden is on you once we are starting a trial.

MR. BRINDISI: I respectfully accept to Your Honors ruling. I don't believe that I do have the burden in this case.

THE COURT: Once we start a trial he is required to be here at all times, and you have shown nothing to show the court that it was anything but voluntary, and I will now continue to hold the proceedings.

Can you get a witness?

MR. WELCH: I am hoping I can get one, yes Your Honor.

THE COURT: All right. Let's take a recess.

THE CLERK: Court stands in recess.

(Whereupon at this point a short recess was taken after which the hearing was resumed in open court).

THE COURT: This hearing, if there are any agents, will they please leave the courtroom.

MR. BRINDISI: Your Honor may I be heard please.

THE COURT: For just a moment.

MR. BRINDISI: All right. Your Honor, I feel that I can't participate in this hearing. I have not discussed this with my client. I really don't have his authority to proceed without him being present.

THE COURT: You have my direction to be present.

MR. BRINDISI: May I just be heard if Your Honor please. Just one word.

THE COURT: You said quite a few words.

MR. BRINDISI: I don't have his assistance to participate in the conduct of this hearing.

THE COURT: You can tell him about what occurred. We will proceed.

MR. BRINDISI: I just don't want to waive any of his rights.

THE COURT: I understand that.

MR. BRINDISI: I feel that I can't participate.

THE COURT: I direct you to. I don't care what you do, but I direct you to represent him.

MR. BRINDISI: I would like to withdraw my request for the hearing.

THE COURT: You can't withdraw that. Once you make that, absent of a sworn statement of that fact that he was there of his own voluntary, own free will, crossed that lawn, and did whatever he did there. I don't know what he did except what I read in the newspapers and over your objection I will go on with the hearing. If you want to waive the hearing, that is up to you.

MR. BRINDISI: I waive it only because I don't have the authority to conduct --- I would like the record to note I withdraw my request because I don't have authority.

MR. LONGERETTA: On behalf of Carl Mazza I feel for Mr. Brindisi to conduct this hearing at this time would be prejudicial to our defendants. We discussed the matter and we would like our objection to this hearing noted on the record.

THE COURT: I don't know what objection you could conceivably have. It doesn't concern your client. Do other defense counsel want to go on?

MR. MANGANELLI: I do not.

MR. SCHOLL: Neither do I.

THE COURT: Your objection is on the record. It is frivolous but it is noted.

Proceed.

MR. WELCH: Government calls Mr. Bergholtz.

EDGAR A. BERGHOLTZ

called as a witness in behalf of the government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Bergholtz, directing your attention to February 24, 1973, at approximately [illegible]:45 P.M., did you have occasion to see Louis Charles King, Jr?

A Yes I did.

Q Where did you see him?

A Emerging from a car at Agent Lew Kelly's house.

Q What did you see him do?

A Walk towards the front window, punch in the front window. There was a flash, two shots. There was some shooting and then King got into the car and drove away.

Q Did you have occasion to go into the house thereafter?

A Yes.

Q Did you notice anything in the house?

A Yes.

Q Did you see a grenade in that house?

A I did.

Q Were you in the house earlier and Mr. King arrived?

A Yes.

Q Was there a grenade in the house?

A No.

MR. WELCH: That is all.

THE COURT: Any cross examination?

MR. BRINDISI: I don't have permission of my client to do so.

THE COURT: You have an opportunity to cross examine. Cross examination is refused. You are excused.

(Witness excused)

THE COURT: Do you wish to present any evidence Mr. Brindisi.

MR. BRINDISI: Your Honor, I can only reiterate what I am saying, I don't have authority to participate.

THE COURT: Did you consult with your client today.

MR. BRINDISI: I talked with him about the verdict.

THE COURT: The Court was advised that you wished to adjourn motions to be made at three o'clock. You were the one that asked for the hearing.

MR. BINDISI: I did not ask for a hearing.

THE COURT: The record shows that you did.

MR. BRINDISI: I asked for authority from my client. I withdrew my request.

THE COURT: All right Mr. Brindisi.

The Court finds as it did on the basis of this testimony, which simply confirms the facts which in substance were reported to the Court by the Assistant United States Attorney and by you, Mr. Brindisi, on Monday morning. And not in that precise detail obviously. I think you said that, Mr. Brindisi, if I recall correctly he was involved in a shooting at the Ramada Inn, as I recall, although I will check the record.

But on the basis of this, there is surely enough evidence and facts on which the Court can and does draw the inference that the defendant King left an automobile freely and voluntarily, that he crossed the lawn of Agent Kelly's, trespassed upon his property, that he smashed a window, threw a grenade into the house and fled from the scene.

On the basis of those facts he certainly triggered the chain of events which resulted in his injuries including the shots which were fired.

The Court will render a more complete opinion in a few minutes. Please remain.

(At this point the Court left the courtroom and later returned at which the following occurred).

THE COURT: I wish the record to note at the conclusion of the report of this incident to the court on Monday morning, the court stated for the record he would make more complete findings as soon as it had time to do so. I rather had my hands full in the morning so what I have to say now does not come like from a bolt of lightning from the blue. I have had an opportunity to study the case and the subject since Monday morning and indeed before that, since the court was advised of the incident by Mr. Evans, the Deputy Court Clerk.

There can be no question that a defendant has a constitution right to be present at his own trial. Likewise, there can be no question that a defendant's right to be present at a trial may be waived and that waiver may be implied from the defendant's conduct. See United States v. Tortora, 464 F. 2d 1202 (2 Cir. 1972); Illinois v. Allen, 391 U.F. 97, 106 (1970). The Supreme Court has held that a defendant who knowingly absence himself from the court room during trial leaves the court free to proceed with trial in like manner and with like effect as if he were present. Diaz v. United States, 223 U.F. 442, 445 (1912).

Waiver of a constitutional right, however, must be both knowing and voluntary. The question for us here, therefore, is whether the defendant King's failure to appear in court on Monday morning, February 26, was knowing and voluntary.

King had been present from the opening of the trial on Tuesday, February 20, until 5:00 P.M. on Friday, February 23, when Court adjourned for the weekend. Substantially all of the Government's case had been presented; the principal witness, the victim of the alleged extortionate loan, had testified; F.B.I. surveilling Agents had testified; transcripts of all redacted recorded conversations received in evidence, have been submitted to defense counsel, all defendants, the court and the jury, and all but two of the six redacted tape recordings received in evidence had been played and heard by the Jury.

On Sunday morning, February 25, Mr. James Evans, the Chief Deputy Clerk of the Court for the Northern District, advised the court that on late Saturday night, February 24, the defendant King had engaged in the acts to which the court has just received testimony.

It now appears from the testimony received here today that Mr. King arrived in an automobile at the home of Special Agent Kelly at about 9:40 or 9:30; that Agent Kelly is the Senior and resident Agent of the F.B.I. in Utica; that King got out of the automobile, crossed the lawn, I think he said smashed a front window and threw a hand grenade into the house. The grenade failed to explode and King observed by a witness was injured in an exchange of shots as he got into the car, retreated into the car and fled from the scene. And as Mr. Brindisi reported on Monday morning, shortly thereafter King was apprehended a few miles away in the parking lot of the Ramada Inn motel, and as Mr. Brindisi did not report but as the court then knew that motel was the place where this jury had been sequestered from the beginning of this trial. The court does not know whether

King's arrival there was accidental or coincidental or deliberate. It is of no moment. Again, according to reports both from Brindisi and the Assistant United States Attorney, and it has been widely publicized, shots were exchanged and King was further injured and taken to St Luke's Hospital. We know since then from the testimony in this record that indeed he was taken to St Luke's Hospital; that indeed he was injured; those injuries have been fully detailed by the attending physician, Dr. Millett. His testimony is included in this record.

There was also testimony and evidence in this record on the very first day of this trial that King had made threats on the life of F.B.I. agents; that there was plots to kill the principal witness; to bribe a judge, bribe jurors, and to engage in other criminal acts including subornation of perjury to obstruct this trial.

On the basis of these facts the court surely must conclude that these acts of King were not only voluntary and knowing but also freely and in all probability deliberate. However the court need not find that these acts were deliberate. It is enough that they were free and voluntary. There is not the slightest hint or suggestion that in any sense they were the results of mistake, carelessness, negligence or anything other than a knowing voluntary act. King must bear therefore full responsibility of any injuries which resulted from his own free and voluntary acts.

When the court convened on Monday morning, February 26, Mr. Brindisi, counsel for King and the Assistant United States Attorney Mr. Welch reported the substance of the events of Saturday night, each having an opportunity to give the facts which were heard before.

Counsel for King stating that he had been advised that it would be at least two months before King would be able to return for trial. Counsel for King then moved for a severance and a mistrial, and the Government agrees to continue the trial in the absence of the defendant King on the ground that King had waived his right to be present by his own knowing and voluntary act.

We denied the defendant's motion and granted the government's stating at the time that we would make appropriate findings later when time permitted.

The trial continued to a conclusion without the presence of King except for a special session of the court held at King's request and on motion of his defense counsel at the St. Luke's hospital, at which King testified in his own defense for something like one hour in the presence of the jury.

On the basis of the foregoing facts we find that King's act in going to the home of Special Agent Kelly and in throwing the grenade in the house knowing and voluntary, and that his own misconduct caused the chain of events which resulted in his injuries. The injuries he sustained were the likely and probable consequence of his misconduct and was thus caused by his own knowing and voluntary act. King must therefore take full responsibility for his incapacity to be present at his trial. It was of his own doing.

In the circumstances, King's acts indicate at the very least an intention to obstruct the orderly processes of this court.

No defendant has a unilateral right, by his own conduct, to set the time or circumstances under which he will be tried. See United States v. Bentvena, 319 F.2d, 916 (2d Cir. 1962), Cert. denied, 375 U.S. 940 (1963). If defendants are free to frustrate completion of the trial by their own voluntary acts, the disposition of criminal cases would always be subject to the whims of the defendants who could obstruct justice either by absenting themselves voluntarily or engaging in voluntary conduct certain or highly likely to incapacitate them so that they cannot attend the trial.

Today, more than ever, public interest demands the speedy trial of criminal cases. This circuit has rules requiring prompt disposition of all criminal cases within ninety days, I think, or within 6 months. This case had just about reached the half way mark since indictment. To delay a trial, in this case under circumstances shown in this record, the greater the likelihood that witnesses wouldn't be able to appear or that their rememberance would have faded and their testimony be less than convincing. This is particularly true in this case, where the record from the very beginning of the trial demonstrates a plan by the defendants to prevent or at least obstruct the trial by the means which I have annunciated earlier, bribing a judge, suborning perjury, threatening witnesses, attempting to kill the principal witness and even threatening the life of Mr. Brindisi, the defense attorney.

Surely it would be foolhardy for the court to delay the trial and to wait and give the opportunity for accomplishment of every threat that had been made after one source, as the one here became a reality.

It is too clear for argument that once the threat against an agent, not to mention the jury had been carried out, the court was required and indeed its plain duty was to employ every means at its disposal in order to prevent a recurrence of violence or other criminal acts directed at the court, jurors and counsel and other court personnel and in order to insure the complete administration of justice in this case.

Here, the defendant King had far more than just adequate notice of the charges against him. He had seen and heard almost emphatically the unescapable and overwhelming evidence compiled by the Government against him, largely in the form of his own incriminating statements indelibly recorded on tapes.

He had heard virtually all the Governments evidence. He was clearly advised on Friday night, February 23, that court was adjourned until the following Monday at 10:00 A.M. The evidence is plain and indeed overwhelming that he knowingly, voluntarily and without justification brought his incapacity to be present at this trial upon himself.

In the light of the circumstances the defendant King cannot obstruct the course of justice by voluntary acts which are almost certain and highly likely to result in the serious incapacitating injuries.

His defense counsel, at the direction of the court, remained and availed himself of every opportunity to present King's defense, which he did with the highest skill. No better defense could have been presented under the circumstances.

Finally, on King's motion and after the court ascertained by a personal interrogation of his attending physician that King was physically and mentally competent to stand trial and to testify, and after first viewing King to make certain there was nothing about his appearance which would offend or prejudice the jurors against him, the court convened a special session of this court in the cafeteria at the St. Luke's Hospital; quarters which were made temporarily available through the courtesy of Mr. Jones, Administrator of that hospital, but which obviously could not be made available for the whole balance of the week consistent with the needs of the hospital.

The session was conducted there with all the formalities of a trial in open court. The Judge appeared in his robe. The Jury was present. The clerk, the marshalls, all defendants, and all the defense counsel, the prosecutor and court reporter, the defendants families, spectators, and a representative of the press were present. King testified at length, denying his guilt and giving an innocent explanation of his role in the transaction in issue. A testimony which plainly, this court and jury, rejected.

We think that under the extraordinary circumstances shown here, the public interest in completing the trial clearly outweighs the voluntary absence of the defendant King. There was no likelihood that the trial could take place soon with King being present. The facilities at the hospital were inadequate and to move the trial over there to give the defendant King an opportunity to testify in his own behalf under the circumstances, the court probably afforded King more than was his due, because in the very act of moving the jury from the confines and the security requirements of this court, it was the exposure to danger that far outweighed the testimony, the value of the testimony given.

It would have been difficult to reschedule this multi-defendant conspiracy trial, if we were to grant a mistrial. There would be a heavy burden on the Government in undertaking two trials.

The government's witnesses, the jury, defense counsel and other personnel were clearly in substantial jeopardy, as we have already noted and which the record amply demonstrates.

The Government's case rested almost exclusively on the testimony of J. Schuyler Sackman who had already been threatened on numerous occasions. Severance would have added substantially to the opportunity to carry out the threat and would have burdened the government and its witnesses and would have certainly resulted in an unwarranted delay in the expeditious administration of justice.

Accordingly the court denies the defendant's motion for a severance, a continuance or a removal of the trial to St. Lukes Hospital and granted the government's motion to continue the trial in King's absence.

The testimony which this court has heard this afternoon only confirms the wisdom of the court in denying these motions in the first instance, and denying it now. A part of the record has been field to protect the interest of witnesses until such time as the Court of Appeals indicates that it be opened.

MR BRINDISI: I take an exception if Your Honor please.

THE COURT: Yes. sure. You each have it.

I had to set a date for sentencing. Do you have any indication, Mr. Brindisi, when the defendant King is likely to be able to come in from the hospital in a

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- : 72-CR-283

LOUIS CHARLES KING, ALBERT J. MARRONE, :
JAMES VINCENT TALERICO, JACK ZOGBY
and CARL J. MAZZA, :

Defendants. :

:

The trial in the above-entitled matter was continued pursuant to adjournment at the United States District Court in and for the Northern District of New York, at Utica, New York, on March 23, 1973, at 10:00 o'clock A.M., before HON. LLOYD F. MAC MAHON, United States District Judge sitting by designation, and a Jury.

* * * * *

THE COURT: All right, call the first one.

THE CLERK: United States of America vs. Carl J. Mazza, 72-CR-283.

THE COURT: Ready for sentence?

MR. WELCH: Yes, Your Honor.

MR. LONGERETTA: We are ready.

THE COURT: I will hear the government.

MR. WELCH: The government respectfully moves sentencing without any recommendation to the court.

THE COURT: Mr. Longeretta.

MR. LONGERETTA: If the court, please, Mr. Mazza, appears before the court for sentencing at conviction by a jury. I believe your pre-sentence report indicates various items in regard to Carl Mazza which I will not take the time to repeat because they are before Your Honor. I do, however, wish to remark on certain things.

Carl is a young man, 28 years of age, and appears before the court without prior record outside of small traffic violations that occurred a number of years before this occurred; is the father of two children.

As the pre-sentence report indicates, Mr.

Mazza was unemployed since February 1972, and as Your Honor is aware of the economic depression that this area is going through, this resulted in that unemployment. Since that time he has been supporting himself on welfare and this in some regard, the unemployment and plus the responsibility of caring for his family, led him into this incident.

I have been approached by various parties and I am sure that letters have been made available to the court, that employment is available to Carl Mazza. It is unfortunate that these instances are always after the fact and never before the facts.

The pre-sentence report I am sure indicates to Your Honor, and I certainly am not going to make any mention or direct any of my remarks to the jury verdict, but I do wish to call attention to the evidence in the trial that the defendant had no more than fifteen minutes discussion on his part and for his participation in those fifteen minutes, he must pay a penalty. I suggest this to the court, a recommendation for leniency. The incident did occur, but since that incident the parties involved have been named and none of those parties involved call Mazza in any respect, and I wish to point out to the court that he was not involved in any other incident or deal, and I feel that this should not enter into the court's thinking on passing sentence.

I respectfully request that the court show leniency in the sentencing of Carl Mazza. I ask the court to take into consideration that he was only involved in this incident in trying to help out a friend and he didn't know what he was getting involved with.

We must ask ourselves, and I certainly ask the court when we ask for leniency in the sentencing, what are we looking for. The question boils down what assurances can we have in the sentence that is passed on this defendant which can result in returning him to society as a law abiding citizen. The assurance I can only point out is a young wife, two young children, a little girl about four years old and a younger child, and the fact that a job is made available upon his release, and I want to assure the court that the defendant is repentant of anything he has done.

So with the assurance that we have that he can return to society as a law abiding citizen, I ask Your Honor to treat him with leniency.

THE COURT: Mr. Mazza do you have anything to say why the court should treat you leniently before I pronounce sentence?

THE DEFENDANT: I didn't know what I was getting involved in, Your Honor.

THE COURT: The testimony in this trial shows that you were willing to take orders and do what you were told. I think you have no personal animosity against this man, no reason in the world to hurt but yet you viciously attacked him with a knife, threatening him for no reason whatever. Your own testimony at the trial shows you to be nothing but a vicious hoodlum.

The court sentences you for ten years on each Counts 6 and 7 to run concurrently with each other. I would give you twenty years were it not for the fact that you do have a wife and young children. I hope that you will take advantage of the fact that you did get the minimum to straighten yourself out and when you come back to this community, you will lead the life of a law abiding citizen, and be of some use to your wife and children. You are certainly of no use to them now.

THE CLERK: United States of America vs. Jack Zogby.

THE COURT: All right. I will hear the government.

MR. WELCH: The government respectfully moves sentence without any recommendation.

THE COURT: Mr. Scholl.

MR. SCHOLL: May it please the court, for the last week or so I have been picturing, thinking, trying to determine what I can say to Your Honor on behalf of my client, Jack Zogby. It seems that every thought of mine led me to a blank wall. I thought perhaps I could discuss his record, but I can't discuss his record. It is tarnished so I can't discuss that. But I think Your Honor, I can respectfully discuss the subject of mercy as it applied to Jack Zogby. Jack has three children, two girls; one is fourteen, the other is eleven, and a 7 year old boy. As a result of what had happened here this young girl has already paid a small penalty and it appears in the future she will pay a larger penalty. She has suffered indignities in school as a result of this matter.

The boy misses his father tremendously, Your Honor.

I am simply appealing to the court's mercy for Jack Zogby as a human being.

If I may, Your Honor, I would like to quote from the Italian philosopher Cervantes, who said, "Among the attributes of God, although they are all equal mercy shines with even more brilliancy than justice."

And Mr. Woodsworth Longfellow said, "Being all fashioned in the self same dusk, let's be merciful as well as just."

Thank You Honor.

THE COURT: Zogby, do you have anything to say before the court pronounces sentence?

THE DEFENDANT ZOGBY: I just want to say I still maintain my innocence. It has been known that juries have been wrong and it certainly has been known where witnesses are wrong, and there is a case in New York City which proves it.

That is all I want to say.

THE COURT: I am aware of your argument that this is a case of mistaken identification. The court conducted a hearing on that question during the trial. The jury found that it was not a case of mistaken identification. The jury is the one body under our law to decide those questions, and they decided it against you.

It is unfortunate that you have a wife and children that have to suffer, being innocent victims, but there are always innocent victims, but Mr. Sackman had a wife and children too. His wife was sick and you without any prior known involvement in it, as far as the evidence goes, threatened him with a knife and put him in mortal fear for his life, obviously taking orders from others. You showed absolutely no mercy, to none of them.

The court sentences you to ten years in each count, 2 and 7, to run concurrent with each other.

I want to inform you and Mr. Mazza that you have a right to appeal this conviction and that if you wish to appeal it you must file your notice of appeal with the Clerk of the Court within ten days. If you have no funds to hire a lawyer, the court will appoint one to help you and represent you on the appeal.

THE DEFENDANT ZOGBY: When do I do that?

THE COURT: Do it within ten days.

THE DEFENDANT ZOGBY: I prepare a file, you say?

THE COURT: File a notice of appeal with the Clerk of the Court. I am sure he will be happy to give you one.

Do you understand that Mr. Mazza?

THE DEFENDANT MAZZA: Yes, Your Honor.

THE CLERK: United States of America vs. James Vincent Talerico.

MR. WELCH: The United States respectfully moves the imposition of sentence Your Honor without any recommendation.

THE COURT: All right, Mr. Manganelli.

MR. MANGANELLI: May it please the court, Mr. Talerico stands before you for sentence.

I know Your Honor has a pre-sentence investigation before you. I would like to add some remarks if I may address to you.

I have known this man for the better part of my life. I have known his family. I have known his wife and children. James Talerico is not a man of violence, Your Honor.

James Talerico impresses me and as I am sure has impressed you as being a very foolish man but not a violent man.

He has been a good husband. He has been married for better than thirty years without interruption. He has raised two children, one of whom is married and he is a grandfather. He has a boy in the service.

Without rehashing everything that went on during this trial, the uncontroverted evidence, even from the lips of the victim, at least to my recollection, tends to establish clearly that this man did not make any threats, did not take any steps or means to physically abuse him or his family or reputation. If my recollection serves me correctly, there was only an implicit threat that was testified to on the part of James

Talerico, and while the law sets forth, as Your Honor told the jury, that implied threats are in the same category as expressed threats, we cannot forget that they were not in fact the same.

I don't believe that Mr. Talerico, Your Honor, intended to violate the spirit of this law. Ignorance of the law is no excuse and this indeed was a serious crime.

I have my personal belief as to the guilt or innocence of this man, but the jury has spoken. The evidence, from the inception of this trial, the allegation as to violence and threats was not one that James Talerico did or even had its inception with James Talerico, and I submit the subsequent events were in no way connected with James Talerico. Of this I am firmly convinced, Your Honor. I can only say to you that, and I can only urge Your Honor to display mercy and leniency in James Talerico's behalf. I can vouch for his non-violent demeanor, Your Honor, and I feel that he can return to society and become a useful citizen.

I thank you for allowing me this

opportunity to address you.

THE COURT: Mr. Talerico, do you have anything to say in your behalf before the court pronounces sentence?

THE DEFENDANT TALERICO: No sir.

THE COURT: The testimony shows and the jury has found that you were deeply involved in this vicious crime. It shows that you were behind the scenes. And the inference is almost compelling that you were helping in the direction of Zogby and Mazza in getting others to get out in front and run the risk and the hiding behind them. So if anything you are worse than they are. And more so that you held yourself out as a friend of Sackman. With friends like you he doesn't need any enemies. Your army records give cause to the court to question your sanity. Your acts in this area leading the court to believe that human beings don't commit vicious crimes if they are sane.

Accordingly you are committed, on Count 4 and Count 7, to the custody of the Attorney General or his authorized Attorney Generals pursuant to 4208(b) of Title 18

United States Code for study, report and recommendation as described under Section 4208(c) Title 18 United States Code. This commitment is to be a consecutive sentence prescribed by law, to wit, forty years imprisonment and $20,000.00 fine unless altered, pursuant to such section, upon receipt of the report and recommendation, the result of such study together with any recommendations which the director of the Bureau of Prison believes will be helpful in determining the disposition of this case, and that information shall be furnished to the court within three months after commitment.

I want to warn you that you have a right to appeal this conviction. That if you wish to do so you must file your notice of appeal with the Clerk of the Court within ten days; that if you have no funds to secure representation on appeal, the court will furnish an attorney free of charge.

THE CLERK: Court stands in recess to chambers.

(The following took place in chambers

THE COURT: I understand there are some motions.

MR. MANGANELLI: On behalf of James Talerico, I have directed a motion, an affidavit executed by Mr. Talerico and respectfully request the court to grant the order permitting him to appeal in forma pauperis in accordance with Title 28, Section 1915.

THE COURT: That application must be made to the Court of Appeals. They will appoint counsel on proper application to the Court of Appeals.

Do you have any other applications?

MR. MANGANELLI: Yes sir.

THE COURT: I grant the application to appoint you to the limited extent of filing a notice of appeal. But from then on, there will be someone appointed by the Court of Appeals.

MR. MANGANELLI: I thought the motion had to be made to you Your Honor.

THE COURT: No. But I grant that only to the extent permitting you to file a notice of appeal so I can hear your application for bail.

MR. MANGANELLI: May I respectfully move at this time that the defendant be permitted free on bail pending the appeal. I ask that bail be reinstated by Your Honor.

THE COURT: I deny that motion on all the grounds stated in the record; on the fact that bail pending sentence would serve no purpose and I don't propose to repeat them, except to have them incorporated as those I had formerly stated them.

MR. MANGANELLI: Thank you.

MR. SCHOLL: On behalf of the defendant, Jack Zogby, I respectfully move that he be permitted to be on bail pending his appeal, and I also think if I am correct in my interpretation of the law that I will be continued as his counsel and to that end I am filing my notice of appeal as assigned counsel.

THE COURT: It is my understanding as long as he has filed a notice of appeal his rights are protected. The Court of Appeals will appoint counsel if he makes appropriate application. I think it is your duty to remain in the case and make appropriate applications for him if he has no funds. Obviously he doesn't know how to do it, and I think it is part of assigned counsel's job to take it at least that far. I wouldn't be a bit surprised if the Court of Appeals reassigns you.

MR. SCHOLL: Thank you.

MR. LONGERETTA: On behalf of the defendant, Carl Mazza, and the fact that he does have a wife and two children, I move his being free on bail pending appeal.

THE COURT: No. I deny the motion. On the previous reasons as stated by me, and the additional reason now that they have been sentenced each to a term of ten years, I see no reason to allow them free on bail.

MR. LONGERETTA: No other application.

THE COURT: The defendants are remanded to the custody of the marshal.

(Whereupon at this point the matter was adjourned to a date to be set for the sentencing of Louis Charles King).

* * * * *

Proceedings, dated May 25, 1973.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LOUIS CHARLES KING, ALBERT J. MARRONE, JAMES VINCENT TALERICO, JACK ZOGBY and CARL J. MAZZA,

Defendants.

CR. NO. 72-CR-283

The sentencing in the above-entitled matter was held pursuant to notice of the United States District Court in and for the Northern District of New York, at Utica, New York, on May 25th, 1973, before Honorable Lloyd F. MacMahon, United States District Judge sitting by designation.

* * * * *

McMAHON, J.

Good morning. You may proceed.

MR. WELCH:

If Your Honor please, Mr. King is before your Honor for sentencing this morning after having been convicted on seven counts in the January-February Trial Term before Your Honor.

The seven counts are making an extortion, an extension of credit and five counts of using extortionate means to collect that extension of credit, and one count of conspiracy.

Since Your Honor has heard the testimony in the case and presided over the trial, and has the benefit of a full pre-sentence investigation that we have not seen, we would just respectfully move sentence, with no recommendation.

THE COURT:

Mr. Brindisi?

MR. BRINDISI:

I have nothing to comment on.

THE COURT:

MR. KING, do you have anything to say for yourself before the Court pronounces sentence?

DEFENDANT LOUIS CHARLES KING:

Yes, I would like to say that I am 43 years old, and since I was 16 I have worked 23 years steady, and I have a wife and I have three children, and we have done a very good job in raising them. We have the children sitting behind me.

I also would like to speak about the condition of my leg, and my arm, and that I tried to help someone out, and this was the result because I feel, and truthfully felt that this was nothing but an entrapment. He cried for help and he leaned on me for help as during the trial as you seen, and this was the results of it, why I am standing in front of you today on this particular case, the first case.

And of course, as I didn't get a change to say before, this has happened some times in the past, but it was never brought to the Court on this Mr. Sackman who is supposed to be so lily white, which he wasn't.

It was just an unfortunate thing that he got me involved, and I kept telling him, "don't involve me," but as a friend, I went to his aid.

I would like to have Your Honor consider this in sentencing me.

Thank you.

THE COURT:

Well, Mr. King, of course I have considered all of the evidence in this case, including your testimony. But it is the jury who determines your guilt or innocence, and not the Court, and they rejected that line of argument, and they rejected that evidence, and the evidence here against you is overwhelming.

It shows you to be a cold-blooded, cruel, vicious and violent man as to society.

The Court sentences you to twenty (20) years and fines $10,000.00 on each of Counts I, II, III, IV, V, VI, and VII, to run concurrently with each other.

The defendant is to stand committed until the total fine of $10,000.00 is paid or he is otherwise discharged according to law.

In not imposing consecutive sentences the Court is taking into consideration the fact that you do have a wife and three children. I hope that you will take this time to reflect on your conduct, and straighten out your life. It isn't over with yet, and because you do have them we cannot condone this kind of conduct.

MR. BRINDISI:

If the Court please, at this time, because of the indigency of the defendant, I would just like to have the Court assign me to represent the defendant for the purposes of filing a notice of appeal. He does not have sufficient funds to pay the appropriate filing fee.

* * * * *

United States of America — Criminal No. 72-CR-283

-against-
Louis Charles King, Jr.
Albert J. Marrone
James Vincent Talerico
Jack Zogby
Carl J. Mazza
John Doe, described as a white male in his early 30's, with long blonde or dirty blonde hair, long blonde sideburns, clean-shaven round face with a ruddy complexion, narrow squinting eyes, and a heavy build with a large stomach, approximately 5'9" to 6' tall.

AFFIDAVIT IN SUPPORT
OF MOTION FOR A
SEVERANCE AND
SEPARATE TRIAL

State of New York)
County of Oneida) ss.:
City of Utica)

John C. Scholl, being duly sworn, deposes and says:

1. That I am the attorney for the defendant, Jack Zogby, in the above entitled criminal action and am fully familiar with all the facts and prior proceedings pertaining thereto.

2. That this motion seeks the severance and a separate trial for defendant, Jack Zogby, as set forth in the Notice of Motion. The basis of same is hereafter stated.

3. The indictment in its second count charges the defendant, Jack Zogby, with violation of Title 18, United States Code, Section 894, and the indictment in its seventh count charges defendant, Jack Zogby, with conspiracy to violate Title 18, United States Code, Section 894.

4. The basis of this motion is that deponent alleges that the defendant, Jack Zogby, would be placed in a dilemma so far as presenting his case to the jury if he were tried with any other co-defendant because of any statements or contentions on the part of the co-defendant, and because of the fact that it might become incumbent upon this defendant to argue his innocence based upon the guilt of a co-defendant or based upon the testimony

of a co-defendant which, in either event, would operate to the obvious prejudice of that defendant and in part upon this defendant.

This deponent believes, upon information and belief, that there are acts and conduct which the government may present during the course of a trial which would be admissible only against one of the defendants and that it would be impossible for the jury to consider said evidence only against that one declarant or actor, bringing truth to the statement through guilt by association.

WHEREFORE, deponent respectfully requests that the court grant the relief sought herein together with such other, further and different relief as the court deems just and proper.

/s/ John C. Scholl
John C. Scholl

Sworn to before me this

18th day of December, 1972.

/s/ Patricia A. Talerico

PATRICIA A. TALERICO
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires Mar. 30, 1974

To: James M. Sullivan, Esq.
United States Attorney
(Eugene Welch, Asst. U.S. Attorney
of counsel)
Federal Building
Syracuse, New York

introduced against only one defendant, this defendant is represented by able trial counsel who can protect him from any prejudice by requesting the appropriate limiting instructions, upon the introduction of any such evidence. The government strenuously objects to the severance of this defendant because the offenses charged in this indictment are of the same or similar character and are based on the same transaction and are connected together and constitute parts of a common scheme. Further, these six defendants have participated in the same series of transactions which constitute the offenses charged. This defendant is therefore properly joined with the other defendants and he has made no showing nor can he make any showing of any prejudice resulting from a joint trial other than the mere possibility that he has a better chance of acquittal if tried separately. Therefore, the government respectfully requests that this Court deny the defendant's motion for severance.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

#1-LOUIS CHARLES KING, JR.
et al., and
#4-JACK ZOGBY

GOVERNMENT'S RESPONSE TO THE DEFENDANT ZOGBY'S MOTIONS FOR SEVERANCE, DISCOVERY AND INSPECTION, AND BILL OF PARTICULARS.

Criminal No. 72-CR-283

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* * * * *

MOTION FOR SEVERANCE

The government opposes the defendant ZOGBY'S MOTION for severance on the basis that the defendant has not shown and is unable to show any prejudice resulting from a joint trial. The defendant speculates that it might become incumbent upon him to argue his innocense based upon the guilt of a co-defendant. Certainly, this defendant can make this argument in a joint trial as well as a separate trial. In addition, the defendant contends that the government might introduce evidence which would be admissible only against one of the other defendants with resulting prejudice against him. The government's response to this argument is that if such evidence is

Court's Order Denying Severance.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

LOUIS CHARLES KING, JR.,
ALBERT J. [illegible],
JAMES VINCENT TALERICO,
JACK ZOGBY,
CARL J. MAZZA, and
JOHN DOE, described as a white male in his early 30s, with long blonde or dirty blonde hair, long blonde sideburns, clean-shaven round face with a ruddy complexion, narrow squinting eyes, and heavy build with a large stomach, approximately 5'9" to 6' tall.

O R D E R

Criminal No. 72-CR-283

UPON consideration of the motions for bills of particulars, and the motions for discovery and inspection, and the motions for severance, filed in this case on behalf of the defendants KING, TALERICO, ZOGBY, and MAZZA, as well as the governments responding affidavits and the argument of counsel on December 29, 1972, it is by the Court

ORDERED as follows:

* * * * *

MOTIONS FOR SEVERANCE

The defendant s [illegible], ZOGBY, and [illegible] have filed motions for severance of their trial from the trial of their co-defendants. Upon examination of the affidavits submitted in support of those severance motions and the government's response, these motions are hereby denied.

At the request of the defense attorney for ALBERT J. MARRONE, which attorney was only recently appointed to represent Mr. Marrone, the above-ordered disclosure shall be made to the defendant MARRONE as well.

Dated at Auburn,
New York, this
day of January, 1973.

ENTER

EDMUND PORT
UNITED STATES DISTRICT JUDGE